65

13202
S. C.
7848

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~350~~ 82.

HOME SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 22, 1905.

(19,852.)

(19,852.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 350.

HOME SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	3	2
Petition for writ of error	4	2
Allowance of writ of error	7	5
Bond on writ of error	9	5
Assignment of errors	10	6
Caption	19	11
Appellant's abstract of record	21	12
Petition	22	12
Exhibit A—Petition to city council	23	13
Amendment to petition	24	14
Preservation of evidence	25	15
Plaintiff's testimony	26	15
Testimony of A. C. Miller	26	15
Plaintiff's offers	27	16
Motion for decree	29	17
Defendants' testimony	30	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 4, 1905.

	Original.	Print
Testimony of Jacob J. Beck	31	18
Testimony closed	32	19
Decree	33	19
Appeal	33	20
Attorney's certificate	33	20
Errors relied upon for a reversal	34	20
Submission	35	21
Opinion *per curiam*	35	21
Final judgment	37	22
Clerk's certificate and return to writ of error	38	22

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Home Savings Bank, appellant, and The City of Des Moines and The City Council of said City as a Board of Review, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
2 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of July, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme
Court of the United States.

3 UNITED STATES OF AMERICA, *ss:*

To the City of Des Moines and the City Council of said City as a Board of Review, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Iowa wherein Home Savings Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this tenth day of July, in the year of our Lord one thousand nine hundred and five.

DAVID J. BREWER,
Associate Justice of the Supreme Court
of the United States.

Due and legal service hereof, and receipt of copy is hereby admitted and accepted, at Des Moines, Iowa, this July, 13, A. D. 1905.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
Att'ys for All Defendants in Error.

4 In the Supreme Court of the United States.

HOME SAVINGS BANK, an Iowa Corporation, Plaintiff in Error, *vs.* THE CITY OF DES MOINES and THE CITY Council of said City as a Board of Review, Defendants in Error.	Petition for Writ of Error to the Supreme Court of Iowa.

To one of the honorable associate justices of the Supreme Court of the United States:

Comes now, the Home Savings Bank, a corporation duly organized under the laws of the State of Iowa, for the transaction of a banking business, with its principal place of business at Des Moines, in said State, and respectfully shows:

That an assessment for taxation of the property belonging to plaintiff in error in the sum of $29,486.00 was made on or about the 9th, day of April, 1902, by the duly elected and qualified assessor of said city of Des Moines, in the State of Iowa, and thereafter, on or about the 22d. day of April, 1902, said assessor increased said as-

sessment of the property of the plaintiff in error by the sum of $32,253.00, making an aggregate assessment upon the property belonging to plaintiff in error in the sum of $61,739.00. That said increase of $32,253.00 in said assessment, was based upon the ownership by plaintiff in error of $32,253.00 of bonds issued by the United States pursuant to the war revenue act of Congress approved June 13, 1898 (30 Stat. L. 448), known as the 3 per cent. war issue of 1898. The capital stock of plaintiff in error actually invested in said war bonds was the sum of $32,675.00.

5 Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed to the city council of said city of Des Moines, sitting as a board of review or of equalization, and thereafter on the 29th. day of April, 1902, said board refused to annul said increase of assessment for taxation whether regarded as based upon the capital of the bank or upon the shares of its own capital stock, and approved and confirmed said assessment.

Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed from the final decision of said board of review to the district court of the State of Iowa, in and for Polk county, where said cause was tried to the court, on its merits as an equity cause, without special assignments of error and was duly submitted in said district court, and was decided on the 23d. day of November, 1903. On the same day, final decree was entered of record in said district court, dismissing this plaintiff in error's said appeal, and rendering judgment against this plaintiff in error for the costs of said appeal, all of which was then and there duly excepted to by this plaintiff in error.

Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed from said final decree of the district court to the supreme court of Iowa, that being the highest court at law or in equity in the State of Iowa, in which a decision could be had in said cause. That said cause was triable *de novo*, in equity in said supreme court, without assignments of error, and was submitted upon a printed abstract of record, which contained all pleadings and papers filed, all proceedings had and done, all evidence offered, introduced or used on the trial, and all rulings and orders made upon the trial of said cause in said district court, together with the final judgment and decree rendered and entered of record in said district court. Said abstract of record contained the whole of the record upon which said appeal was submitted in the supreme court of Iowa.

6 Thereafter, after argument of counsel for both parties, said cause was submitted to the supreme court of Iowa on the 22d. day of November, 1904, and thereafter, on the 17th day of December, 1904, the supreme court of Iowa, rendered its decision, affirming the judgment of the lower court, (101 N. W. (Iowa) 867), and in pursuance of said decision, on the 17th. day of December, 1904, final judgment was rendered and entered of record in said supreme court of Iowa in favor of the parties herein above named as defend-

ants in error, and against this plaintiff in error, affirming the judgment below and also against this plaintiff in error for costs.

That the questions submitted to the supreme court of Iowa for decision and decided against plaintiff in error by that court, were (1) whether under section 8 of article 1 (clauses 1, 2, 11, 12, 13, 16 and 18) of the Constitution of the United States, and section 1 of article XIV of the amendments thereto, and under the laws and statutes of the United States, the capital owned by plaintiff in error and invested in said 3 per cent. war bonds of 1898, issued by the United States, pursuant to the act of Congress, approved on the 13th. day of June, 1898, (30 Stat. L. 448) is subject to assessment and taxation under the laws of the State of Iowa; (2) or whether the shares of its own capital stock can, under the said provisions of the Constitution and laws of the United States be legally taxed to and against this plaintiff in error, notwithstanding the provisions of the statutes of Iowa.

That the judgment so rendered by the supreme court of Iowa, was unwarranted in law, as plaintiff in error is advised.

Plaintiff in error presents herewith a bond in proper form and an assignment of errors, and prays that a writ of error be allowed so as to have a review in the Supreme Court of the United States of said decision and judgment of said supreme court of Iowa; that a citation issue in due form and course, requiring each of the defendants in error above named to appear to said writ of error, and show
7 cause why said judgment of the supreme court of Iowa should not be corrected as provided by law and the rules of this court.

HORATIO F. DALE,
WM. G. HARVISON,
Attorneys for Plaintiff in Error.

STATE OF IOWA, }
Polk County, } ss:

W. G. Harvison, being first duly sworn on oath deposes and says that he was one of the attorneys for plaintiff in error, Home Savings Bank, throughout the proceedings above set out before the board of review, on the appeal therefrom to and before the district court of the State of Iowa, and on the appeal therefrom to and before the supreme court of the State of Iowa; that he has personal knowledge of the contents of the foregoing petition for writ of error, and that the matters and things therein set forth are true as he verily believes.

W. G. HARVISON.

Subscribed in my presence and sworn to before me by the said W. G. Harvison at Des Moines, Iowa, this 7th day of February, 1905.

[Notarial Seal of J. B. Sullivan, Iowa.]

J. B. SULLIVAN,
Notary Public, Polk County, Iowa.

Writ of error allowed this 10th day of July, 1905.

DAVID J. BREWER,
Associate Justice, Supreme Court of United States.

8 [Endorsed:] In the Supreme Court of the United States. Home Savings Bank, plaintiff in error, *vs.* The City of Des Moines *et al.*, defendants in error. Petition for writ of error to the supreme court of Iowa.

9 Bond.

U. S. Circuit Court, Southern District of Iowa.

I hereby certify that the sureties on the annexed bond and the bond itself would be approved by me if the same were presented to me for my approval.

Witness my hand and the seal of said circuit court at Des Moines, Iowa, this 21st day of June, 1905.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk U.S. Circuit Court, Southern District of Iowa,
By MAZE VERNON, Deputy.

Know all men by these presents, that we, Home Savings Bank, an Iowa corporation, as principal, and H. H. Taylor, S. B. Garton and H. C. Hansen, as sureties, are held and firmly bound unto the City of Des Moines, and the City Council of said City as a Board of Review in the full and just sum of five hundred (500) dollars, to be paid to the said City of Des Moines, and the City Council of said City as a Board of Review, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of February, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the supreme court of the State of Iowa, in a suit depending in said court, between Home Savings Bank, appellant, and The City of Des Moines, and The City Council of said City as a Board of Review, appellee-, a final judgment was rendered against the said Home Savings Bank, appellant, and the said Home Savings Bank having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Des Moines, and The City Council of said City as a Board of Review citing and admonishing each of them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said

Home Savings Bank shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

HOME SAVINGS BANK,
By A. C. MILLER, Cashier.
H. H. TAYLOR. [SEAL.]
S. B. GARTON. [SEAL.]
H. C. HANSEN. [SEAL.]

Sealed and delivered in presence of—
Witness:
H. F. DALE.

Witness:
ARTHUR REYNOLDS, N.
A. C. MILLER.
EDWIN L. BOWEN.

Approved by—
DAVID J. BREWER,
Associate Justice of the Supreme
Court of the United States.
July 10, 1905.

10 In the Supreme Court of the United States.

HOME SAVINGS BANK, an Iowa Corporation, Plaintiff in Error, *vs.* CITY OF DES MOINES and THE City Council of said City as a Board of Review, Defendants in Error.	Error to Supreme Court of Iowa.

Assignment of Errors.

Comes now plaintiff in error, Home Savings Bank, and avers that the judgment rendered by the supreme court of Iowa against plaintiff in error, in the above entitled cause, on the 17th. day of December, 1904, is erroneous and against the rights of plaintiff in error; and, as and for its assignments of error upon which it relies for a review and reversal of said judgment, plaintiff in error respectfully shows the court: that there is manifest error upon the face of the record in said judgment of the supreme court of Iowa, and in the record and proceedings in said cause, in the following respects, to-wit:

First. The supreme court of Iowa erred in rendering judgment confirming the assessment for taxation made against plaintiff in

error, whatever construction may be placed upon section 1322 of the Code of Iowa of 1897 for the following reasons:

a. The assessment complained of should have been annulled, if Code section 1322 is construed to authorize the assessment for taxation against plaintiff in error, as owner, of the shares of stock issued by it which it did not own, but which were owned by the individual stockholders, such judgment being in violation of section one (1) of article XIV of the amendments to the Constitution of the United States, concerning due process of law, and equal protection of the law.

11 *b.* The assessment complained of should have been annulled or reduced by the sum of $32,675, if Code section 1322 is construed to authorize the assessment for taxation against plaintiff, as owner, of the shares of stock of said savings bank, in the sense that it included its capital, because said capital to the extent of $32,675.00 had been used to purchase three per cent. war bonds, issued under section 33 of the act of Congress approved June 13, 1898, (30 St. L. 448; 2 Supp. Rev. St. U. S. pages 779 to 804), which were then owned by plaintiff in error, and were exempt from taxation, in any form, under the war revenue act of 1898, above referred to.

By said judgment plaintiff in error has been deprived of a title, right, privilege or exemption, secured to it by the Constitution and statutes of the United States.

Second. Section 1322 of the Code of Iowa of 1897, if it is construed to authorize the assessment for taxation, against savings banks, of the shares of capital stock duly issued by said savings banks and owned by the individual stockholders, without regard to net earnings or dividends declared and without the right of recoupment by said bank from the individual stockholders, out of dividends declared or otherwise, for taxes so paid, then said Code section 1322 is, to that extent, in violation of that part of the 14th. amendment (U. S. Const. art. XIV—sec. 1), which provides that property shall not be taken without due process of law and secures to all persons equal protection of the laws; and by the judgment of the supreme court of Iowa complained of, plaintiff in error is compelled to pay taxes, as the owner of property which it does not own, but which is owned by other and different persons; and for these reasons said judgment is unconstitutional and void, and thereby plaintiff in error has been deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

12 Third. Section 1322, of the Code of Iowa of 1897, requires shares of stock in savings banks, of which plaintiff in error is one, to be assessed to such banks, notwithstanding that said banks are not the owners thereof. But chapter 1 of title VII of said Code of Iowa, including section 1312 thereof, requires property to be listed, for taxation, by the owner or the person who has the control or management thereof; and sections 1322 and 1323 of said Code of Iowa require shares of stock of all corporations, except those of State

and savings banks and of loan & trust companies, to be assessed for taxation to the "individual stockholders" or to the "owners thereof," while under section 1322 of said Code of Iowa, shares of stock of savings banks, the property of the individual stockholders, are required to be assessed to such savings banks, who are not the owners thereof.

The provisions of said section 1322 of said Code of Iowa, requiring the assessment for taxation, to savings banks, of shares of stock issued by said savings banks, but not owned by or under the control or management of said savings banks, are in contravention of each of the provisions of section one (1) of article XIV of the amendments to the Constitution of the United States concerning due process of law and equal protection of the laws, and are unconstitutional and void; and the judgment of the supreme court of Iowa, sustaining said provisions of the Code of Iowa, has deprived plaintiff in error of a title, right, privilege or exemption, to which it is entitled under the Constitution of the United States.

Fourth. Section 1325, of the Code of Iowa of 1897, makes all corporations liable for the payment of taxes assessed upon shares of stock, whenever such shares of stock are assessed to the "individual stockholders" or to the "owners thereof" under the provisions of sections 1322 and 1323 of said Code of Iowa, and further gives to said corporations paying said taxes, a right of proportionate recoupment from each individual stockholder for the taxes so paid,
13 and establishes the amount so paid as a lien upon the stock and upon the unpaid dividends belonging to such stockholder; but this right of recoupment is limited, by the express terms of said section 1325 to payments made by corporations in discharge only of "taxes assessed to the stockholders of such corporations," and does not apply to savings banks, of which plaintiff in error is one.

The provisions of section 1322 of said Code of Iowa, requiring plaintiff in error to be assessed with and to pay taxes upon shares of stock owned by the individual stockholders, without any right of recoupment to plaintiff in error from the owner of said stock, and without regard to whether there are any dividends belonging to the owner of said shares of stock available for payment of taxes, or to the effect of such payment by said savings banks in impairing its capital, are in contravention of each of the provisions of section one (1) of article XIV of the amendments to the Constitution of the United States, concerning due process of law and equal protection of the laws, and are unconstitutional and void, and the judgment of the supreme court of Iowa, sustaining said provisions of the Code of Iowa, has deprived this plaintiff in error of a title, right, privilege or exemption to which it is entitled under the Constitution of the United States.

Fifth. The act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898 (30 St. L. 448; 2 Supp. Rev. St. U. S. 779 to 804), com-

monly referred to as the war revenue act of 1898, in section 33 thereof, provides for the issue of three (3) per cent. war bonds, and further provides that "the bonds herein authorized shall be exempt from all taxes or duties of the United States, *as well as from taxation in any form by or under State municipal or local authority*," and the judgment of the supreme court of Iowa against plaintiff in error, now before this court, has improperly and unlawfully deprived plaintiff in
14 error of the exemption from taxation of such of the war bonds above described, in the sum of $32,675.00 as were then owned by plaintiff in error and were subjected to assessment for taxation by the assessor of said city of Des Moines, and by the action of the board of review, and by the judgments severally rendered by the district and supreme courts of the State of Iowa, confirming said assessment for taxation of plaintiff in error's said war bonds of 1898. That plaintiff in error was thereby deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Sixth. The object of the immunity from taxation of the 3 per cent. war bonds of 1898, issued under the act of Congress, of June 13, 1898, above mentioned, was to induce the investment of capital in said war bonds of 1898, in order to obtain the sinews of war for the use, necessities and benefit of the Government of the United States, and the assessment and taxation of the capital of plaintiff in error invested in such war bonds in the sum of $32,675.00 is a mere evasion of the statutory prohibition contained in said act of Congress against taxing such bonds "in any form," and is, in its effect, an indirect taxation, in one form, of the bonds purchased with that part of the paid up capital of plaintiff in error, and is taxation upon and direct obstruction to the fiscal operations of the Government of the United States, in violation of the true intent of said statute; and has deprived plaintiff in error of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Seventh. Upon the investment of money by plaintiff in error in the three per cent. war bonds of 1898, above mentioned, in the sum of $32,675.00, plaintiff in error ceased to be the owner of said money as capital or otherwise, the title to said money having passed to the United States, and it could not lawfully be taxed upon said money which it did not own. Plaintiff thereupon became the owner of the war bonds so purchased, upon which plaintiff in error
15 could not lawfully be taxed in any form, as capital or otherwise, such taxation being prohibited by the war revenue act of 1898. The judgment of the supreme court of Iowa, confirming the assessment for taxation in question, was in violation of the Constitution and statutes of the United States, and deprived plaintiff in error of a title, right, privilege or exemption to which it was entitled under said Constitution and statutes.

Eighth. Section 1322 of the Code of Iowa of 1897, is and was in violation of section 8 of article 1 of the Constitution of the United

States, and especially clause 2 thereof which provides that: "That Congress shall have power * * * to borrow money on the credit of the United States," (1 U. S. Comp. Stats., 1901, page LXVIII), if said section 1322 is construed to authorize the taxation, as shares of stock, of the capital of savings banks, of which plaintiff in error is one, including that part of its capital invested in the three per cent. war bonds of 1898, above mentioned, and to that extent, said Code section 1322, attempts to authorize an illegal tax upon the powers and functions of Congress and of the Federal Government, and places a direct hindrance upon and obstruction to the proper exercise of such functions by the United States, and is unconstitutional and void; and as a result thereof, plaintiff in error has been deprived of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Ninth. The statutes of the State of Iowa, which, through the exercise of its assessing and taxing power, authorize an assessment for purpose of taxation upon shares of stock, thereby meaning the capital owned by plaintiff in error, which had been invested in the three per cent. war bonds of 1898, above described, is in violation of section 1 of article XIV of the amendments to the Constitution of the United States, commonly referred to as the fourteenth amendment, which provides: "Nor shall any State deprive any
16 person of * * * property, without due process of law," in that the collection of said tax is a taking of property belonging to plaintiff in error without authority of law, and in violation of the Constitution and statutes of the United States, and deprives plaintiff in error of the exemption of such war bonds from taxation, to which it is, by law, entitled; whereby plaintiff in error has been deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Tenth. The statutes of the State of Iowa, which, through the exercise of its assessing and taxing powers, authorize an assessment for taxation upon the shares of stock, thereby meaning that part of its capital invested by plaintiff in error in the three per cent. war bonds of 1898, above mentioned, is in violation of section 1 of article XIV of the amendments to the Constitution of the United States, commonly known as the fourteenth amendment, which provides: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws," in that section 1322 of the Code of Iowa of 1897, in fixing the value of the shares of stock of savings banks, of which plaintiff in error is one, required the assessor to take into consideration for assessment purposes of taxation the capital of said savings banks, without deducting war bonds of 1898 purchased with said capital, which bonds by act of Congress are exempt from taxation, while under section 1321 of said Code of Iowa, in ascertaining the capital of private bankers, which is subject to taxation, the assessor is required to take into consideration "the aggregate actual value of bonds and stocks, after deducting the portion thereof exempt, or otherwise taxed in this State," whereby plaintiff in error has been

deprived of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Eleventh. If the true intent and meaning of section 1322 of the Code of Iowa of 1897, is and was to authorize the taxation of the capital owned by savings banks, of which plaintiff in error is
17 one, including that part of its capital invested in the three per cent. war bonds of 1898, above mentioned, then that part of section 1322 of the Code of Iowa, which authorizes an assessment for taxation upon that part of its capital so invested in said war bonds, is and was in direct violation of the provisions of the war revenue act of 1898, exempting such bonds from taxation "in any form" and is void; and thereby plaintiff in error was deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Wherefore, plaintiff in error prays that said order and final judgment of said supreme court of Iowa be reversed, with costs of suit.

February 16, 1905.

HORATIO F. DALE,
WM. G. HARVISON,
Attorneys for Plaintiff in Error.

18 [Endorsed:] In the Supreme Court of the United States. Home Savings Bank, plaintiff in error, *vs.* City of Des Moines *et al.*, defendants in error. Assignment of errors.

19 Transcript of the Record.

In the Supreme Court of Iowa.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL of said City, Appellees. } No. 23593. In Equity.

20 Supreme Court of Iowa.

Pleas and proceeding in the supreme court of Iowa, at the September, A. D. 1904, term of said court, begun and held at the State capitol, in the city of Des Moines, of the State of Iowa, before said supreme court duly convened.

Be it remembered that heretofore, to-wit: on the 8th. day of April, A. D. 1904, there was filed in the office of the clerk of the supreme court of Iowa, a printed abstract of record, in words and figures as follows, to-wit:

21 Due and legal service of this abstract is hereby accepted at Des Moines, Iowa, this — day of April, 1904.

——, ——,
Attorneys for Appellees.

In the Supreme Court of Iowa, May Term, 1904.

HOME SAVINGS BANK, Appellant,
vs.
THE CITY OF DES MOINES, IOWA; J. M. BRENTON, Mayor, and W. H. Brereton, Chairman of Board of Review, *et al.*, Appellees. } In Equity.

Appeal from Polk District Court.

Hon. James A. Howe, judge.
Dale & Harvison, attorneys for appellant.
W. H. Bremner, M. H. Cohen and R. B. Alberson, attorneys for appellees.

Appellant's Abstract.

22 Appellant's Abstract.

On May 2, 1902, appellant filed the following

Petition.

Par. 1. The plaintiff states: That it is a corporation organized under and by virtue of the laws of Iowa, and is, and for a long time past has been engaged in a general savings bank business at the city of Des Moines in said State.

Par. 2. Plaintiff further states: That on or about April 9th, 1902, it was assessed by the assessor with monies and credits in the sum of $29,486.00; that thereafter, and on or about April 22d, 1902, said assessor increased the assessment theretofore made by him to the sum of $61,739.00; that said increased assessment of $32,253.00 was and is based upon certain United States Government bonds, the same being of the war issue of 1898, and bearing three per cent. interest; that said bonds were in good faith owned and held by plaintiff on the 1st day of January, 1902; its capital stock to the extent of $32,675.00 being invested therein.

Par. 3. And plaintiff further states: That thereafter, and on the 24th day of April, 1902, it appeared before the individual defendants mentioned herein, the same sitting as a board of review, or board of equalization for the purpose of correcting erroneous assessments as between individuals, the same being then in session as such, and filed with said board of review his complaint in writing whereby he claimed that said increased assessment, being based upon said Government bonds, was illegal and void for that said Government bonds are and were not subject to taxation; and requested that the action of the assessor with respect thereto be annulled, all of which will more fully and at length appear from reference to said complaint, a

copy thereof being hereto attached, marked Exhibit "A" and made a part hereof; that said board of review refused to set aside the action of the assessor complained of, but approved the same, and thereafter, and on or about April 29th, 1902, adjourned *sine die*.

23 Par. 4. And plaintiff further states: That thereafter, and within the time allowed by law, it duly appealed from said action of said board of review to this court, serving notice thereof in the manner and form required by the statute.

Par. 5. And plaintiff further states: That the action of the assessor in returning said Government bonds for taxation, and the action of the board of equalization, or board of review, in approving said action of the assessor are illegal and void for that said bonds are not subject to taxation, but the same are expressly exempted therefrom.

Wherefore, the plaintiff prays that the action of the assessor in returning said bonds for taxation, and the action of said board of review, in approving said action of the assessor be cancelled, set aside and held for naught; that its assessment of monies and credits made as aforesaid be reduced by striking therefrom so much thereof as is based upon said Government bonds; and plaintiff prays for all such other, further and different relief as to equity may pertain, and in as in duty bound it will ever pray, etc.

Exhibit "A," attached to the petition is as follows:

Before the Honorable City Council of the City of Des Moines, Iowa Sitting as a Board of Review.

In re Assessment of the HOME SAVINGS BANK. Complaint.

To the honorable city council above named:

Your complainant, The Home Savings Bank of Des Moines, Iowa, respectfully represents unto this honorable body that it is a savings bank, organized under the law of Iowa, and is engaged in business as such; that on or about April 9, 1902, it was assessed by the assessor with money and credits in the sum of $29,486.00, as will more fully and at length appear from reference to assessment stub No. 6572; that thereafter, and on April 22, 1902, said assessor increased the assessment theretofore made by him to the sum of $61,739.00 as will more fully and at length appear from reference to assessment stub No. 5996.

24 Your complainant further represents that said increased assessment of $32,253.00, was and is based upon certain United States Government bonds, the same being of the war issue of 1898 and bearing 3 per cent. interest; that said bonds were in good faith owned and held by your complainant on the 1st day of January, 1902, its capital stock to the extent of $32,675.00 being invested therein.

And your complainant further respectfully represents that the action of the assessor in increasing the assessment of your complain-

ant as above stated is based entirely upon the fact that the said Government bonds were not included in the original assessment and are now sought to be included in the amended assessment; that the action of the assessor in making said additional assessment is unwarranted, illegal and void, for that the capital stock of your complainant to the extent that same is invested in said bonds is not subject to taxation.

Wherefore your complainant prays that the action of the assessor in making said additional assessment be set aside, cancelled and held for naught, and that the original assessment of $29,486.00 be reinstated; and your complainant prays for all such other, further and different relief as to this honorable board may seem meet in the premises, and as in duty bound it will ever pray, etc.

And thereafter, and on October 20, 1903, the appellants filed the following

Amendment to Petition.

Comes now plaintiff, and by leave of court first had and obtained and for amendment to its petition, respectfully states:

Par. 1. That the assessment first made by the assessor, and based upon moneys and credits, as stated in paragraph 2 of the original petition, is illegal and void for that a savings bank organized under the laws of Iowa is not assessable upon moneys and credits held by such bank.

Par. 2. The assessment based upon corporation stock, being the second assessment mentioned in said paragraph of the original petition, is illegal and void for that the plaintiff was not the owner of corporation stock on the first day of January, 1902, or at any other time covered by said assessment; and for the further reason that an assessment upon corporation stock against a savings bank is not warranted under the law of the State of Iowa.

Par. 3. Plaintiff further respectfully states: That an assessment against it, based upon its shares of capital stock, without deducting from the value thereof the Government bonds held by it on January 1, 1902, is illegal and void for that:

a. The plaintiff bank was not the owner of the shares of its own capital stock, but the same was owned by its stockholders, and an assessment of the same to the plaintiff bank is an assessment to it of property not owned by it.

b. Such assessment upon its shares of stock is illegal and void because in contravention of the statutes of the United States and of the provisions of section 8 of article 1 of the Constitution of the United States.

c. Such assessment amounts to the taking of property of the individual without due process of law in controvention of the provisions of section 1 of article XIV of the Constitution of the United States.

Wherefore, the plaintiff prays as in its original petition.

Preservation of Evidence.

On October 13, 1903, this cause came on for trial before the Hon. James A. Howe, judge of said court. On said trial the official shorthand reporter of the court, under the order of the court, duly reported in shorthand all of the evidence offered, and all the proceedings had on the trial, and his said report in shorthand was duly certified by the reporter and by the trial judge; and thereupon, and immediately at the close of said trial, on to wit: October 20, 1903, was duly filed with the clerk. Thereafter and on the 20th day of January, 1904, the translation of said report into longhand,
26 also duly certified, was filed with the clerk. All rulings and orders made adversely affecting the appellant were by it duly excepted to at the time.

Plaintiff's Testimony.

A. C. MILLER, for plaintiff, testified: Am now and have been cashier of the plaintiff since it was organized in 1891. The first step with reference to the assessment for 1902, was the receipt of a blank from the assessor calling for a sworn statement of the condition of the bank on January 1, 1902. In response thereto I made such sworn statement to the assessor, the same being Exhibit "1," now handed me. It shows a total of $65,595.00 of property subject to taxation not making any deductions or allowances. It shows also a claim made by the bank of deduction therefrom of United States Government bonds to the extent of $32,675.00; also the claim for reduction of real estate held by the bank and leaving a net total of $29,065.17 subject to taxation, including $10,000 surplus.

Soon after that we received from the assessor the first assessment notice, the same being Exhibit "2," now handed me. It is dated April 9, 1902, being No. 6572, and shows an assessment against the bank of moneys and credits in the sum of $39,486.33.

A little later we received a second assessment notice, being Exhibit "3," now shown me. Exhibit "3" is the assessment roll for 1902, No. 5996, marked second notice, and assesses the bank on corporation stock in the sum of $61,739.00. Up to the receipt of Exhibit "3" we had no personal communication with the assessor or any of his deputies.

On January 1, 1902, the Home Savings Bank owned corporation stock of the Valley national bank in the sum of $250.00. It owned no other corporation stock.

27 After we received Exhibit "3," I appeared before the board of review of the city of Des Moines in person and "kicked" on the assessment on the ground that our Government bonds were not taxable; and I asked the board of review to exempt them from taxation. They refused to change the assessment. I then went to our attorney and a written protest was prepared and filed with the board of review.

Cross-examination:

I did not appear before the board of review until after receiving the second notice which raised the assessment. I would have appeared to correct the $10,000 error in Exhibit "2" even if the assessment had not been raised.

Mr. BREMNER: It is conceded that the amount stated in Exhibit 2 as $39,486.00 should have been stated and was intended to be stated by the assessor as $29,486.00, and the same is true of the books to which that amount has been carried.

Plaintiff offers in evidence Exhibit "1," being the statement furnished the assessor; also Exhibit "2," being the first assessment; also Exhibit "3," being the second assessment.

Plaintiff also offers in evidence the assessor's book of the fourth assessorial district of the city of Des Moines for 1902, showing upon line 24 on double page 102 that it is assessment roll No. 6572, assessing the Home Savings Bank under the head of "moneys and credits" with the sum of $58,783.00, the taxable valuation of same being $14,696.00.

Plaintiff also offers in evidence from the tax list of the same district for the year 1902, the first line of page 319, showing an assessment against the Home Savings Bank under the head of taxable value of personal property in the sum of $14,700.00.

28 Plaintiff also offers in evidence Exhibit 4, the same being the protest filed with the board of review April 24, 1902, as shown by the file mark of the city clerk, which file mark is also offered in evidence. (Exhibit 4 is identical with Exhibit "A," of the petition.)

Plaintiff also offers in evidence the report of the committee of the board of review, endorsed on said protest as follows: "We recommend that the assessment stand approved. A. L. Smith, E. Van Dyck."

Plaintiff also offers in evidence roll call No. 329 of the board of review as follows: "Be it resolved by the city council of the city of Des Moines that the report of the committee and the assessment against the Home Savings Bank stand approved as made by the assessor." Said roll call shows seven votes in favor of such adoption and none against it.

Mr. HARVISON: I suppose there is no question but that the protest was properly filed and was refused before the board of review.

Mr. BREMNER: We admit that the protest was filed and the assessment was approved as made by the assessor which would amount to the protest being refused or overruled.

Plaintiff offers in evidence Exhibit "5," the original notice of appeal in this case, together with the return of service thereon, showing that the same was received by the sheriff of this county and served by him personally on W. H. Brereton, chairman of the board of review, on the 3d day of May, 1903.

Mr. BREMNER: It is conceded that W. H. Brereton named in the

return of the sheriff on Exhibit "5" was the chairman of the board of review of the defendant city for 1902, and that the notice of appeal was served within the time allowed by law; also that the board of review of the defendant city adjourned *sine die* April 29, 1902.

29 Plaintiff also offers in evidence from the report of the code commission at the close of the second paragraph on the first page the following:

"In the exercise of the duty of rewriting the law and improving "its phraseology, the code commission have made many verbal "changes but *has* done so with great care in order that the meaning "of the statutes should not be thereby materially changed."

Plaintiff also offers in evidence from the bottom of page 3 of said report the following: "It must be distinctly understood that a "change of language does not necessarily indicate any intention to "change the meaning of the law."

Plaintiff also offers in evidence from said report on page 48, section 20 thereof as follows:

"SECTION 20. National, State and savings banks, and loan and "trust companies should be taxed on the same basis as private banks, "except that the tax should be paid by the stockholders. At pres- "ent natio-al and State banks are taxed by means of taxation on "the stock. Code, sec. 818; McClain's Code, sec. 1297. Twenty-third "General Assembly, chap. 39. There seems to be no reason why "savings banks should not be taxed in the same manner."

Plaintiff also offers in evidence section 20 of the Code of Iowa as reported by the code commission, found at the top of page 251 thereof.

Testimony closed.

Motion for Decree.

Mr. HARVISON: Plaintiff now moves for a decree in its favor for that:

30 First. Any assessment of moneys and credits against a savings bank is unwarranted under the laws of this State and void.

Second. The assessment of corporation stock against a savings bank is unwarranted under the laws of this State.

Third. That if it shall be found that the assessment complained of is against the capital stock of the plaintiff bank, then, and in that case, the amount of its capital invested in Government bonds, as shown by Exhibit 1, should have been deducted from such assessment.

Fourth. If it shall be found that the assessment complained of is upon the shares of stock of the plaintiff corporation, then such assessment, and the law seeming to warrant the same, is illegal and void, for that.

1st. If the tax shall be regarded as levied against and paid by

the bank, then the bank is compelled to pay the debt of another person.

2d. If the tax shall be reregarded as levied upon the property of the shareholders and paid by them, then and in that case, the shareholder is deprived of the right to offset his indebtedness, granted him under the general laws of the State.

Mr. HARVISON: It is conceded in open court that the plaintiff, The Home Savings Bank, owned and held on January 1st, 1902, Government bonds of the United States of America in the sum of $32,675.00, and that its capital stock to that extent was invested therein.

Mr. BREMNER: The defendant concedes this to be true, but objects to the admission as incompetent, irrelevant and immaterial.

The foregoing motion was taken under advisement by the court.

Defendants' Testimony.

Thereupon the defendants, upon leave of coure, offered the following testimony on their own behalf:

31 JACOB J. BECK, for defendants, testified:

I was deputy assessor of the city of Des Moines under Assessor French during his term of four years ending January 1, 1903. I made the assessment shown in the assessment roll No. 5996 (Exhibit 3), assessing the Home savings bank with corporation stock in the sum of $61,739.00.

Q. What does the amount $61,739.00 corporation stock represent?

Objected to as incompetent, irrelevant and immaterial and seeking to contradict the written report of the assessor made at the time.

A. The value of the shares of the capital stock of the Home savings bank as near as I could get it from the statement furnished the assessor's office by the bank.

Cross-examination:

I had been discharging the duties of assessor as deputy three or four years prior to making the assessment shown in Exhibit "4," and just mentioned by me. Mr. French was the assessor in 1902 and I was his deputy. Exhibit "2" the first assessment was signed by Mr. French himself. I received my instructions from him and never went contrary to his instructions in making an assessment. Exhibit "3" the second assessment, is in my hand writing. In making that second assessment I knew there had been an assessment of the bank previously made for the same year by the assessor himself. I concluded the first assessment was wrong and corrected the assessment. The first assessment was wrong because it was made on a valuation of the moneys and credits owned by the bank after deducting the Government bonds therefrom, the same as had been

done in prior years. We did deduct Government bonds from
32 the assessment of savings banks in prior years, and in the first assessment against the Home savings bank for 1902 the same deduction was made. I did not make the second assessment for the express purpose of compelling the bank to pay taxes on the Government bonds. The city solicitor advised us to make the assessment on the shares of the corporation itself. I don't think he told me that if I made the assessment on the shares that thereby Government bonds would in effect be taxed. He told me that Government bonds helped make up the value of the shares of the bank. In previous years we recognized the fact that Government bonds were not assessable to savings banks and we did not assess them. I I did not always respect and allow the exemption provided by law in making assessment on other lines of property; sometimes we exempted a soldier's homestead and sometimes we didn't. While the law allows certain exemptions with respect to a soldier's homestead yet we allowed it if we thought a man was dependent and entitled to it; otherwise not.

In making the assessment against the Home savings bank we took the capital stock, $50,000.00, the surplus of $10,000.00 and the undivided profits of $5,595.00, making a total of $65,595.00; from that we deducted the value of the real estate $3,854.00, leaving $61,741.00 subject to taxation. I took it for granted that their shares must be worth that much money. If their capital stock was represented in whole, or in part, by bills receivable which were not good they would impair the value of the stock. I knew a large part of the assets of the bank were bills receivable, but I made no examination of the bills receivable, nor as to their value.

Testimony closed.

33 And thereupon this cause was submitted to the court and thereafter, and on November 23, 1903, the court entered of record in this cause the following:

Decree.

Now on this 23d day of November, 1903, being the September term of this court, this cause came on for hearing in regular order, the plaintiff appearing by its attorney, W. G. Harvison, and the defendants appearing by W. H. Bremner, city solicitor. After hearing the evidence and arguments of attorneys, and being fully advised in the premises, the court finds that the equities are with the defendants.

Therefore, be it ordered, adjudged and decreed that this appeal be and is hereby dismissed, and the costs of this action taxed to the plaintiff.

Appeal.

And thereafter, and on the 21st day of March, 1904, the plaintiff duly appealed from said decree to this court by serving notice of such appeal upon the attorneys for the defendants, and upon the clerk of the court below as by law provided, and by filing said notice with said clerk on said date.

Certificate.

The foregoing abstract contains all the pleadings, and the whole record in this cause including all the testimony and evidence offered on the trial thereof.

DALE & HARVISON,
Attorneys for Appellant.

34 Supreme Court of Iowa.

Errors Relied upon for a Reversal.

Thereafter, on the 29th day of September, A. D. 1904, there was filed in said court and cause, appellant's brief and argument, which, in compliance with rule 54, clause 4, of the rules of said supreme court of Iowa, set out the errors relied upon for a reversal, in said court, as follows, to wit :—

(1.) Section 1322 of the Code of Iowa, (1897), contravenes U. S. Revised Statute-, section 3701, and other statutes, exempting from taxation by any State, the bonds issued by the United States.

(2.) Section 1322 of the Code of Iowa, (A. D. 1897), contravenes the provisions of the Constitution of the United States article 1, section 8, clauses 1 and 2, conferring upon the United States the power to borrow money, etc.

(3.) Section 1322 of the Code of Iowa, (A. D. 1897), contravenes the provisions of the fourteenth (14th), amendment to the Constitution of the United States, concerning due process of law and equal protection of the laws, by assessing and taxing to the bank, corporate stock therein, which was the property of the individual stockholders; also without giving to the bank a right of recoupment for taxes so paid ; and without regard to the dividends or other property, if any, belonging to each said stockholder, and held by said bank.

Other Briefs Filed.

35 Thereafter, on the 28th day of October, A. D. 1904, there was filed in said court and cause, appellees' brief and argument. And on the 12th day of November A. D. 1904, there was filed in said court and cause, appellant's reply brief and argument.

Submission of the Cause.

And on the 22nd day of November, A. D. 1904, at the September A. D. 1904 term of said supreme court of Iowa, an order was duly made and entered of record in said court, for the submission of said cause as an equity cause triable *de novo* without assignments of error, upon the foregoing abstract of record, and the printed briefs and arguments of counsel, filed in said cause.

Opinion of the Supreme Court.

And on the 17th day of December, A. D. 1904, an opinion of said supreme court of Iowa, was handed down and filed in said cause, the same being in words and figures following, to wit:

In the Supreme Court of Iowa.

Filed Dec. 17th, 1904.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES ET AL., Appellees.
} Reported in 101 N. W. R. (Iowa), 867.

Appeal from District Court, Polk County—Hon. James A. Howe, Judge.

Appeal from the judgment of the district court affirming the action of the board of review of the city of Des Moines in refusing to deduct from the assessment of appellant banks upon its shares of stock the amount of Government bonds owned by *them*. Affirmed.

Per Curiam:

36 This court is fully committed to the doctrine that the general exemption from State taxation with which the bonds of the United States are clothed, does not entitle the bank to deduct the amount of such bonds from the value of the shares of *their* stock which are assessed to it for the purpose of taxation under Code section 1322.

German Savings Bank *vs.* Burlington, 118 Iowa 84.
National State Bank *vs.* Burlington, 119 Iowa 696.
First National Bank *vs.* Independence, 122 Iowa 482.

We are favored by an elaborate and able argument for appellants, insisting that such taxation cannot be upheld, especially as applying to savings banks, and that this position has the support of the Federal Supreme Court, whose holdings, in the last resort, must gov-

ern the rights of the parties. These propositions were presented quite fully in the cases above cited, and we are still satisfied with the conclusions there reached. Those cases have all been decided within such recent period that a rediscussion of the subject and of the bearing of the various precedents cited is not called for.

The judgment of the district court is affirmed.

37 Final Judgment.

On the 17th day of December A. D. 1904, in the record of the proceedings of said supreme court of Iowa is a judgment in said cause, in words and figures as follows, to-wit:

PEOPLES SAVINGS BANK, DES MOINES SAVINGS Bank, and Home Savings Bank, Appellants,
vs.
CITY OF DES MOINES and THE BOARD OF REview of said City, Appellees.
} Nos. 23525, 23593, and 23655.

Appeal from Polk District Court.

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly. It is further considered by the court that the appellants pay the costs of this appeal, taxed at $30.75 and that execution issue therefor.

(Signed) H. E. DEEMER,
Chief Justice.

38 Return to Writ of Error.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNcil of said City as a Board of Review, Appellees.
} Return of Clerk of Supreme Court to Writ of Error.

THE UNITED STATES OF AMERICA,
State of Iowa,
} ss:

I, John C. Crockett, clerk of the supreme court of Iowa, in pursuance of the command of the writ of error in the above entitled cause, to which this certificate is attached, do hereby certify and return, that the above and foregoing is a true and correct transcript

of all of the record, the opinion and final judgment of this court in the above entitled case of The Home Savings Bank, appellant, now plaintiff in error, against The City of Des Moines, and the City Council of said City, as a Board of Review, appellees, now defendants in error, as full, true and complete as the same are now of record and on file in my office.

I further certify that the assignments of error, petition for allowance of the writ of error, bond, and the citation with the return of admission of service thereon endorsed, are each hereto attached in original form, true and correct copies of same being retained on file in this office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court at Des Moines, Iowa, this 18th day of July A. D. 1905.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.
H. L. BONSQUET, Deputy.

Endorsed on cover: File No. 19,852. Iowa supreme court. Term No. 350. Home Savings Bank, plaintiff in error, *vs.* The City of Des Moines and The City Council of said City as a Board of Review. Filed July 22d, 1905. File No. 19,852.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 83.

PEOPLE'S SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 24, 1905.

(19,853.)

(19,853.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 83.

PEOPLE'S SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Caption	1	1
Appellant's abstract	3	1
Notice of appeal	4	2
Statement of objections	5	2
Evidence	9	5
Admission	9	6
Testimony of C. H. Martin	10	6
Exhibit 1—Monthly statement of clearing house association, January 1, 1902	12	7
2—Assessment roll, 1902	14	9
Admission	15	10
Exhibit 3—Assessment roll, 1902	16	11
4—Assessment roll, 1902	17	13
Admissions	18	14
Exhibit 5—Objections, filed April 22, 1902	19	15
6—Protest, filed April 22, 1902	20	16
7—Notice of appeal (not set out)	21	17
Admissions	21	17
Records of city council	22	17
Testimony of C. H. Martin (recalled)	24	19
Exhibit 8—Letter, Martin to Layman, October 2, 1903	24	19
9—Letter, Martin to Layman, April 1, 1903	25	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 11, 1906.

	Original.	Print.
Plaintiff rests	25	20
Testimony of Jacob G. Beck	25	20
Defendant rests	29	22
Decree	29	22
Appeal	30	23
Assignment of errors	32	24
Motion to advance, &c.	35	25
Stipulation to advance, &c.	37	26
Order to advance	39	27
Opinion	41	28
Judgment	44	29
Petition for writ of error	46	29
Allowance of writ of error	51	33
Assignment of errors	54	33
Writ of error	61	36
Bond on writ of error	66	38
Citation	69	39
Proof of service of citation	70	40
Clerk's certificate	71	40

1 PEOPLES SAVINGS BANK, Plaintiff,

vs.

CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendant.

2 In the Supreme Court of the State of Iowa.

PEOPLES SAVINGS BANK, Plaintiff in Error,

vs.

CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Be it remembered that on the 22nd day of March, A. D. 1904, there was filed in the said cause the appellant's abstract in the words and figures following to-wit:

3 Due, timely and legal service of the within abstract is hereby acknowledged this 21 day of March, 1904.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
Attorneys for Appellees.

In the Supreme Court of Iowa, May Term, 1904. In Equity.

PEOPLES SAVINGS BANK, Appellant,

vs.

CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellees.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

N. T. Guernsey, Attorney for Appellant.
W. H. Bremner, M. H. Cohen, R. B. Alberson, Attorneys for Appellees.

Filed March 22, 1904.

JNO. C. CROCKETT,
Clerk Supreme Court.

On the second day of May, A. D. 1902, the plaintiff filed in the Polk district court a

Notice of Appeal

from its assessment for the year 1902, which notice was in the words and figures following, to-wit:

To James M. Brenton, Mayor, and Wm. H. Brerton, Presiding Officer of the Board of Review of the City of Des Moines, Polk County, Iowa:

You are hereby notified that the People's Savings Bank, of Des Moines, Iowa, has appealed and does hereby appeal to the district court of Polk county, Iowa, from the action of the board of review of the city of Des Moines with reference to a certain complaint filed by the People's Savings Bank with said board of review in regard to its assessment on corporation stock for the year 1902 and from the action of said board of review in refusing to reduce the assessment against said bank for the year 1902 under the heading of "corporation stock," as requested in the written complaint filed by said bank with said board.

And you are further notified that the matter will come on for hearing at the next, being the September, 1902, term of said court, which will be begun and held at Des Moines, Iowa, on the 15th day of September, A. D. 1902. And unless you appear thereto and defend before noon of the second day of said term default will be entered against you and decree rendered as prayed.

PEOPLE'S SAVINGS BANK,
By N. T. GUERNSEY,
Its Attorney.

Service of the said notice was accepted on the second day of May, 1902, by J. M. Brenton, the then mayor of the city of Des Moines, and by W. H. Brerton, a member of the city council of said city and presiding officer of the city council of said city acting as a board of review.

In the said matter the said People's Savings Bank by
5 leave of court filed its objections to the assessment complained of in the words and figures following, to-wit:

Statement of Objections.

The Peoples Savings Bank, by leave of court first had and obtained, makes the following statement of its objections to the assessment from which this appeal is taken, and statement with reference to the taxes levied upon the said assessment.

I.

The assessment appealed from includes the bonds of the United States of America to the value of sixty-two thousand and sixty dol-

lars ($62,060.00) which were owned by the said Peoples Savings Bank on the first day of January, 1902, and constituted a part of the property in which its capital stock was invested, which bonds were not subject to assessment and taxation by the state of Iowa, or any of its subdivisions, and for this reason the said sum of sixty-two thousands and sixty dollars ($62,060.00) should be deducted from the amount of the said assessment.

II.

In the said assessment there is included an assessment on account of twenty shares of stock of the Oak Park Land Company of the value of eight hundred and forty dollars ($840.00) owned by the said Peoples Savings Bank, on the first of January, 1902. That the said Oak Park Land Company is a corporation created, organized and existing under the laws of the state of Iowa, with its principal place of business in the city of Des Moines, in the said state, whose property consisted, to a very large extent, if not entirely, of real estate taxed directly to the said Oak Park Land Company, and that under the laws of the state of Iowa, the stock in the said cor-
6 poration is not taxable on account of the said real estate, and whatever value, if any, it has in addition thereto, is taxable through the said Oak Park Land Company to the said Peoples Savings Bank as a stockholder in said company, and to include same in this assessment is to tax the said Peoples Savings Bank twice on account of its ownership of said stock.

III.

That in the said assessment there is included six shares of the stock of the Citizen's National Bank, of Des Moines, Iowa, and which is a banking association, organized under the laws of the United States, which said stock was the property of the said Peoples Savings Bank on the first of January, 1902. That the said stock is taxable, under the laws of Iowa, to the said Peoples Savings Bank as a stockholder in the said Citizen's National Bank, and that to include its value in the assessment appealed from is to tax the said Peoples Savings Bank twice on account thereof.

IV.

That in the said assessment appealed from there is included seventeen shares of the capital stock of the Des Moines Insurance Company, a corporation created, organized and existing under the laws of the state of Iowa, with its principal place of business in the city of Des Moines, Iowa, which stock in the said Des Moines Insurance Company was owned by the said Peoples Savings Bank on the first of January, 1902. That the said Peoples Savings Bank is taxable under the laws of the state of Iowa upon the said stock through the said Des Moines Insurance Company, and that to include the same in the said assessment appealed from is to tax the said Peoples Savings Bank twice on account thereof.

V.

That there was included in the said assessment ten shares of the capital stock of the State Trust Company of the value of one
7 thousand dollars, owned by the said Peoples Savings Bank on the first of January, 1902, on account of which stock the said Peoples Savings Bank was taxable under the laws of Iowa through the said State Trust Company, and that to include the same in this assessment is to tax the said Peoples Savings Bank twice on account of the said stock.

VI.

That if, or in so far as the statutes of the state of Iowa relative to the taxation of this appellant, authorize the assessment of the bonds of the United States of America, owned by the said Peoples Savings Bank, for taxation, and the levy of a tax upon the same, the said laws are void because in contravention of the statutes of the United States and of the provision in Section 8 of Article I of the Constitution of the United States, to the effect:

"That the Congress shall have power * * * to borrow money on the credit of the United States" and said Peoples Savings Bank expressly claims the benefits and immunities of the said provision of the Constitution of the United States.

VII.

That if, or in so far as Section 1322 of the code of Iowa authorizes the assessment to the said Peoples Savings Bank of the shares of the capital stock of the said bank which are the property of its stockholders, and if, and in so far as the said section and the laws of Iowa authorize the levy of a tax against the said Peoples Savings Bank on account of the value of the said shares, and based on said assessment, the said statutes authorize the collection from the said Peoples Savings Bank of a tax levied, not upon its property, but upon the property of others, and that this constitutes a taking of the property of the said People's Savings Bank without due process of law, in contravention of the provisions of Section 1 of Article XIV of the Constitution of the United States, which section is as follows:

8 "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And the said Peoples Savings Bank expressly sets up and claims the benefits and immunities of the said provision of the Constitution of the United States.

VIII.

That the said section 1322 of the statutes of the state of Iowa in fact require- the assessment and taxation of the property of the cor-

poration, the Peoples Savings Bank, and that under the said section the said Peoples Savings Bank is entitled to have deducted from the assessed value of the property in which its capital stock is invested, the amount of its government bonds, and corporation stocks hereinbefore specified, and that if, and in so far as the said section does not authorize the deduction of the value of the said bonds of the United States of America, the same is in contravention of each of the provisions of the Constitution of the United States hereinbefore referred to which are set up by the said bank and the immunities and benefits of which are expressly claimed by the said bank.

IX.

That upon the assessment from which this appeal was taken taxes were levied amounting, in the aggregate, to the sum of two thousand three hundred and sixty-five 84-100 dollars, which taxes were demanded from the said Peoples Savings Bank by the county treasurer of Polk County, Iowa, and that the first installment of said taxes amounted to one thousand one hundred eighty-two and 92-100 dollars ($1,182.92), and that the second installment thereof was of the same amount, making a total of two thousand three
9 hundred sixty-five and 84-100 dollars ($2,365.84); that on or about the first day of April, 1903, the said Peoples Savings Bank paid the first installment of the said taxes, and that on or about the seventh day of October, 1903, the said People's Savings Bank paid the second installment of the said taxes; that each of the said payments was made by the said Peoples Savings Bank under protest and with an express reservation of the right to resort to such legal proceedings, or take such other steps as might be necessary to recover the amount of the taxes illegally exacted.

That the said payments were so made under protest in order to avoid the liability for the excessive penalties which accrue in the event of the failure to pay taxes at or before the date when they become delinquent, and in order that pending the determination of the questions involved in this appeal, the state might not be deprived of the revenue to which it would be entitled upon a tax based upon a legal assessment against the said Peoples Savings Bank.

Wherefore the said Peoples Savings Bank prays that its appeal may be allowed, and that the assessment made may be set aside, and that a legal assessment may be made, and that upon the making of the same, an order be made fixing the amount of taxes which have been paid by it, and that the excess paid by it be ordered refunded, with interest, and for all other proper orders in the premises.

Evidence.

Thereafter, and on the 14th day of October, 1903, it being one of the regular days of the September term, 1903, of the said court, the said matter came on for hearing before Hon. James A. Howe, one of the judges of the said court, and thereupon the following proceedings were had:

Admission.

It is admitted that the Peoples Savings Bank is a corporation organized under the laws of the state of Iowa as a savings
10 bank, and was such January 1, 1902, and ever since that time has been, and that on January 1, 1902, it had a paid up capital of $100,000.00.

C. H. MARTIN, sworn on the part of plaintiff, testified as follows: I am cashier of the Peoples Savings Bank, the plaintiff or appellant in this proceeding, and was such cashier on the 1st day of January, 1902, and prior to that time. At that time the stock in the bank was held by quite a number of stockholders, approximately thirty-five, and was held by them in varying amounts.

Exhibit 1 is a correct statement of the resources and liabilities of the Peoples Savings Bank January 1, 1902. The assessment of the bank in the first instance in 1902 was made by F. A. French, the assessor in the city of Des Moines at that time; when he made this assessment I made him a statement of the resources and liabilities of the bank as of January 1, 1902. Exhibit 1 is a substantial copy of the statement which I furnished to Mr. French at that time, and it shows the resources and liabilities of the bank on January 1, 1902, just as they were shown by the statement I so furnished to Mr. French.

At the time this assessment was made I offered to permit the assessor to examine the books of the bank and offered to furnish him any information as to its condition which he desired.

In the resources of the bank there was corporation stock aggregating on the 1st of January, 1902, $4,040.00. This stock is listed at the bottom of this statement Exhibit 1.

Referring to the first item, certificate No. 322 for some shares of stock in the Oak Park Land Company, that company was an
11 Iowa corporation having its principal place of business in Des Moines, and substantially all of its assets were real estate.

The next item is six shares of stock in the Citizen's National Bank carried at $1,000.00. This is the Citizen's National Bank, of Des Moines, Iowa, organized under the national banking law.

The next is a certificate for seventeen shares in the Des Moines Insurance Company which is an Iowa corporation with its principal place of business in Des Moines.

The last item is for ten shares of stock in the State Trust Company, which is another Iowa corporation with its principal place of business in Des Moines.

All of this testimony as to the character of these corporations commencing with the Oak Park Land Company, was objected to as irrelevant and immaterial.

A list of the real estate which appears in the resources of the bank, valued at $14,000.00 is as follows:

Lots 35 and 36, in First Addition to University Place; assessed value $1,440.00; taxable value $360.00.

Lot 219, First Plat of Clifton Heights, assessed value $200.00; taxable value $50.00.

South half of Lot 4, Greenwood Park, assessed value $4,160.00; taxable value $1,040.00.

Lot 8 and the east 15 feet of Lot 7, Oakdale Addition, assessed value $680.00; taxable value $170.00.

Lot 65 Lakeside, assessed value $120.00; taxable value $30.00.

Lot 61, third Plat of Prospect Park, assessed value $1,880.00; taxable value $470.00.

The foregoing testimony as to the real estate was objected
12 to by defendant and appellee- as irrelevant and immaterial.

Exhibit 1 states correctly the actual resources and liabilities of the bank on January 1, 1902.

In Exhibit 1 there is an item, U. S. Bonds $57,000.00 and premium on the same $5,060.00. These were bonds issued by the United States of America owned by the bank, and the premium just stated is the premium which they were worth in the market on the 1st of January, 1902. As to the character of the bonds they were U. S. Coupon 3's. I am not entirely certain about that, either 2's or 3's.

EXHIBIT 1.

The plaintiff and appellant here offered in evidence Exhibit 1 which is as follows:

Monthly Statement to the Des Moines Clearing House Association of the Condition of the Peoples Savings Bank of Des Moines, Iowa, at Close of Business January 1, 1902.

Resources.

Loans and discounts		$959,521.61
Overdrafts		10,003.72
Premium on U. S. Bonds		5,060.00
U. S. Bonds		57,000.00
Other bonds, stocks and mortgages see list below		4,040.00
Banking House and other real estate and furniture and fixtures		14,000.00
Due from other Banks	$72,221.26	
" " U. S. Treas.		
Cash on hand	34,569.81	106,791.07
Total		$1,156,416.40

13 *Liabilities.*

Capital stock	$100,000.00
Surplus fund	25,000.00
Undivided profit less expenses, taxes, etc	9,871.98
Circulating notes	
Dem'd Dep'ts (ind.)	
Time deposits	1,019,757.75
Dividends unpaid	1,786.67
Bills re-discounted	
Bills payable	
Total	$1,156,416.40

Ctf.	No. 322-20	shares	stock	Oak Park Land Co. $840.00
"	No. 428-6	"	"	Citizens Nat. Bank 1,000.00
"	No. 114-17	"	"	D. M. Insurance Co. 1,200.00
"	No. 7—10	"	"	State Trust Co. 1,000.00
	Total			$4,040.00

STATE OF IOWA, *Polk County, ss:*

I, C. H. Martin, cashier of the People's Savings Bank, Des Moines, Iowa, do solemnly swear that the above statement is true to the best of my knowledge and belief.

(Signed) C. H. MARTIN, *Cash.*

Subscribed and sworn to before me this 14th day of October, 1903.

(Signed) HARRY SOAR,
[SEAL.] *Notary Public.*

When Mr. French made the assessment of the property of the bank to which I have referred he handed me a notice of the assessment which I now produce and which is marked Exhibit 2, which is as follows:

14 EXHIBIT 2.

N. B.—Be particular to take Name and Address Correctly.

Assessment Roll, 1902. No. 6575.

——, POLK COUNTY, IOWA, *Apr. 9th*, 1902.

Assessment of People's Savings B'k. Age, —. Address: 7th and Locust. Dist.: 2nd. Road Dist. No. —. School Dist.: W. D. M. Dogs—Male, No. —; Female, No. —.

Description of Personal Property.

	No.	Actual Value.
Horses.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
Mules and Asses.		
Mules and Asses over 1 year old		
Cattle.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
Miscellaneous.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2		55171.98
Corporation Stock		
Merchandise, Date of Inv		
Capital employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

New Buildings Erected During 1899.

Description.	Sec. or Lot.	Twp. or Block.	R.	Actual Value.	Taxable Value.
....	.....	.....	.....	.....	.....
... .	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

To People's Savings Bank:

You are hereby notified that if you are not satisfied, that the foregoing assessment is correct, you can appear before the Board of Review, which meets at the office of City, Township Clerk on the first Monday of April, 1900.

Dated this 9th day of Apr., 1902.

Remember, if you fail to appear before this Board you lose your rights to a hearing before any body. The Board of Supervisors have absolutely no authority over your assessment and the courts cannot hear you except on appeal from the Board of Review.

F. A. FRENCH,
Assessor, —— Township.

15 This shows $55,171.98 moneys and credits.

I received Exhibit 3 by mail. I had no interview with the assessor or with either of his deputies relative to the resources and liabilities of the bank or relative to the new assessment prior to receiving this Exhibit 3.

Admission.

It is admitted that J. G. Beck was deputy assessor and that the signature to Exhibit 3 is his signature.

Plaintiff here offered in evidence Exhibit 3 which is as follows:

16 EXHIBIT 3.

N. B.—Be particular to take Name and Address Correctly.

Assessment Roll, 1902. No. 400.

——, POLK COUNTY, IOWA, *April* 22, 1902.

Assessment of Peoples Savings Bank. Address: ——. ——Twp., Dist. 2nd. Road Dist. No. —. School Dist. W. D. M. Dogs—Male, No. —; Female, No. —.

Description of Personal Property.

	No.	Actual Value.
Horses.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
Mules and Asses.		
Mules and Asses over 1 year old		
Cattle.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
Miscellaneous.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2		
Corporation Stock		122871
Merchandise, Date of Inv		
Capital employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

New Buildings Erected During 1899.

Description.	Sec. or Lot.	Twp. or Block.	R.	Actual Value.	Taxable Value.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

To Peoples Savings Bank:

You are hereby notified that if you are not satisfied, that the foregoing assessment is correct, you can appear before the Board of Review, which meets at the office of City, Township Clerk on the first Monday of April, 1900.

Dated this 22 day of April, 1902.

Remember, if you fail to appear before this Board you lose your rights to a hearing before any body. The Board of Supervisors have absolutely no authority over your assessment and the courts cannot hear you except on appeal from the Board of Review.

J. G. BECK,
Deputy Assessor, —— Township.

[Written across face:] 2nd notice.

17 EXHIBIT 4.

The plaintiff here offered in evidence the stub No. 6575 from the assessment roll book of 1902 marked 2nd District Personal, said stub being as follows:

N. B.—All property must be listed at its actual cash value. Taxes are Levied on 25 per cent. of same.

Assessment Roll, 1902. No. 6575.

——, POLK COUNTY, IOWA, *Apr. 9th*, 1902.

Address: People's Savings B'k, 7th and Locust. Age, —. Dist.: 2nd. Road Dist. No. —. School Dist.: W. D. M. Dogs—Male, No. —; Female, No. —.

Description of Personal Property.

	No.	Actual Value.
Horses.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
Mules and Asses.		
Mules and Asses over 1 year old		
Cattle.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
Miscellaneous.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		122,871
Moneys and Credits from Form No. 2		[55,171.98]*
Corporation Stock		
Merchandise, Date of Inv		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

[* Figures enclosed in brackets erased in copy.]

New Buildings Erected During 1901.

Land Description (Addition).	Sec. or Lot.	Twp. or Block.	R.	Actual Value.	Taxable Value.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

STATE OF IOWA, *Polk County, ss:*

I, —— ——, do solemnly swear (or affirm) that I am the person assessed above, that I have read the foregoing Assessment Roll of property listed or assessed to me, and that the same is a full, true and correct list of my taxable property, both real and personal property, subject to taxation within this District, and all property which should be listed on this Assessment Roll to me or by me.

—— ——.

Subscribed and sworn to (or affirmed) this 9th day of Apr., 1902.
F. A. FRENCH, *Assessor.*

18 *Admission.*

It is admitted by both parties that the stub exhibit 4 is the only stub upon which the two notices Exhibits 2 and 3 were issued, and that it is the only assessment in the assessment roll book against the plaintiff.

Plaintiff offered in evidence the following from the book marked "Assessor's Book 1902, City of Des Moines, 2d District, Polk County," on double page 115.

Assessment roll No. 6575. Name Peoples Savings Bank. Address 7th & Locust street.

Total value personal —.

Actual value.	Taxable value.	Moneys and credits.
$122,871	$30,718	$122,871

Admissions.

It is admitted that the book above referred to as "Assessment Book 1902, City of Des Moines, second district Polk County," is the book which the city council acting as a board of review had before it when it acted upon the assessment of the Peoples Savings Bank, and that the said book was the only record of the said assessment which the said board of review had before it when it acted upon the same except the assessment roll stub exhibit 4.

It is admitted that exhibits 5 and 6 are protests or objections, filed by the Peoples Savings Bank with the city council acting as a board of review against the assessment in controversy, except that the blue mark upon the same and the recommendations of the committee on the same were put on after they were filed.

It is further admitted that both of said exhibits 5 and 6 were filed with the board of review on the 22d day of April, 1902.

The witness continued:

I remember that exhibit 3 was received by me upon the morning that I appeared before the board of review and filed with the board exhibit 6 which was written by me except the recommendations of the committee.

19 The plaintiff here offered in evidence exhibits 5 and 6 which are as follows:

EXHIBIT 5.

To the City Council of the City of Des Moines, Sitting as a Board of Review:

The Peoples Savings Bank, making more specific the objections it has made orally and in writing to its assessment, of which it received notice April 22, 1902, said assessment being for the sum of $122,879.00, under the heading "corporation stock," states:

That the errors complained of in the said assessment are as follows:

First: In the said assessment there is assessed to the said Peoples Savings Bank the sum of sixty-two thousand dollars on account of the bonds of the United States of America, owned by the said bank on the first day of January, 1902, which bonds were not subject to assessment and taxation, and that on this account the sum of fifty thousand dollars should have been deducted from the amount of the said assessment.

Second: That in the said assessment there is included an assessment of one thousand seven hundred dollars as the value of certain stock in a corporation, to-wit, the Oak Park Land Company, whose property consists almost entirely of real estate, and that the said assessment against the People's Savings Bank is erroneous in that it is assessed with the total value of the said stock, whereas under the law that portion of the value of the said stock which is represented by the real estate should have been assessed to the said corporation, and the said assessment, in assessing the same to the Peoples Savings Bank, is erroneous.

Third: That the said assessment is erroneous in that it includes three thousand one hundred dollars as the value of certain stocks in other corporations not hereinbefore mentioned. That the stocks so erroneously included are assessed to the respective corporations by which they have been issued and the taxes upon the same
20 are paid by the said respective corporations, and that the value of the said stock should not therefore be included in the

assessment against the said Peoples Savings Bank, or assessed against the said bank.

Wherefore, The said Peoples Savings Bank renews its complaint that the said assessment against it is erroneous for the reasons hereinbefore set out, and renews its request that in the particulars in which the said assessment is so erroneous the same may be rectified.

PEOPLE'S SAVINGS BANK,
By N. T. GUERNSEY, *Its Attorney.*

Filed April 22, 1902.
E. R. BENNETT, *City Clerk.*

EXHIBIT 6.

APRIL 22, 1902.

The Peoples Savings Bank, Des Moines, Iowa, protest on the assessment of the shares of stock for the reason that the assessor has refused to allow deduction for the government bonds, and also for the corporation stocks owned and held by said bank at time said assessment was made, January 1, 1902.

PEOPLE'S SAVINGS BANK,
By C. H. MARTIN, *Cash.*

Filed April 22, 1902.
E. R. BENNETT, *City Clerk.*

Plaintiff and appellant offered from double page 243 of the tax list for 1902 of the Second District, Polk county, Iowa, personal, now being within the city of Des Moines, the following:

Owner's name, People's Savings Bank; description, 7th & Locust; taxable value of personal, $30,720; consolidated tax, first installment, $1,182.72; second installment, $1,182.72; total, each installment, first installment, $1,182.72, second $1,182.72; date of payment, first installment 3-31-03; second installment 9-18-03.

21 Cross-examination:

Q. How long after January 1, 1902, did the bank remain the owner of the United States bonds to which you have referred in your direct examination?

Objected to as irrelevant and immaterial.

A. A part of them I think we sold the latter part of January and the balance the 1st of February.

Q. How long prior to January 1, 1902, had the bank been the owner of these bonds?

Same objection.

A. About forty days.

Q. For what purpose were these bonds purchased?

A. So that we would not have to pay taxes on that much of the capital stock.

Plaintiff and appellant offered in evidence the notice of appeal from the assessment in question market exhibit 7, together with the

acceptance of service thereon by the mayor of the city and by the presiding officer of the board of review of the said city of Des Moines.

EXHIBIT 7.

Exhibit 7 is the notice of appeal already set out and which is not here repeated.

Admission.

It is admitted that W. R. Brereton was the presiding officer of the Board of Review of the City of Des Moines during its existence as a board of review in the year 1902, and that on the 2d day of May, 1902, J. M. Brenton was the mayor of the city of Des Moines, and that the signatures of the said officers to the said acceptance of service are the genuine signatures of said officers.

And it is further admitted that the said exhibit 7 was filed with the clerk of this court on May 3, 1902.

It is admitted that the city council of the city of Des
22 Moines sitting as a board of review in the year 1902 adjourned on the 29th day of April of said year.

The plaintiff offered in evidence all of the record of the city council of the city of Des Moines sitting as a board of review relative to the assessment of the People's Savings Bank now in controversy, as follows:

Extract from the minutes of the City Council, sitting as a Board of Review, meeting held on the 7th day of April, 1902, found on page 59 of the printed record published by authority of the city on May 26, 1902.

"No. 166: Communication from City Assessor presented as follows:

GENTLEMEN: I will not be ready to meet with the Board of Review until the 21st of April, 1902, to equalize assessments. I would suggest the following days for each district: First and second districts, April 21st and 22d; third district, April 23d; fourth district, April 24th; fifth and sixth districts, April 25th; seventh district, April 26th; eighth district, April 28th; ninth district, April 29th.

I also think it would be wise for the Board of Review to instruct the city clerk to publish the various days for the various districts.

Respectfully submitted,

(Signed) F. A. FRENCH,
City Assessor."

"Moved by Brereton to adopt the recommendation. Motion carried. Yeas 8, nay- none. Whitney not voting."

Objected to by the defendant- and appellee- as incompetent, irrelevant and immaterial.

Extract from the minutes of the City Council, sitting as a Board of Review on the 22d day of April, 1902, as found on pages 111 and 112 of the proceedings of the city council, published by authority of the city May 26, 1902.

"No. 319. Protests of the State Savings Bank and Geo. E. Pearsall, Des Moines Savings Bank, Arthur Reynolds and all other stockholders of the Valley National Bank and the Des Moines National Bank, Peoples Savings Bank, Citizen's National Bank and
23 Geo. E. Pearsall, Iowa National Bank and H. T. Blackburn for the stockholders of said Iowa National Bank, R. A. Crawford, and all other stockholders of the Valley National Bank, Consumers' Supply Company, W. A. Hotchkiss, Andrew Noegard, P. F. Collier & Son, presented, to each of which the following recommendation was attached. We recommend the assessment stand approved as made by the Assessor.

(Signed) W. H. BRERETON.
JOHN HARLEY.
W. S. FRALEY.
E. A. HIGGINS.

Moved by Van Dyke that recommendations of the committee be adopted and assessments stand approved. Motion carried. Yeas 7, nays none."

"No. 320. To the Honorable City Council sitting as a Board of Review:

That your committees on first and second assessorial districts recommend that the assessments in both districts stand approved as made by the assessor.

(Signed) W. S. FRALEY.
E. A. HIGGINS.
JOHN HARLEY.
W. H. BRERETON.

Moved by Whitney to adopt, and assessment stand approved as made by the assessor. Motion carried. Yeas, 7, nays, none."

Objected to by the defendant- and appellee- as incompetent, irrelevant and immaterial.

"Extract from the proceedings of the City Council, sitting as a Board of Review on the 29th day of April, 1902, found on pages 135 of the printed record of the proceedings of the City Council, published by authority of the city May 26, 1902.

"No. 383. Moved by Prunty that assessments in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th and 9th assessorial districts stand approved. Motion carried. Yeas 6, nays none."

Objected to by the defendant- and appellee- as incompetent, irrelevant and immaterial.

24 C. H. MARTIN, recalled, testified as follows:

Exhibit 9 is a letter written by me to Mr. Layman, treasurer of this county, on or about the 1st of April, 1903, and his acknowledgement of the receipt of it, and exhibit 8 is a similar letter and acknowledgement.

During this year the treasurer has kept some deposits in our bank. The method of paying the taxes is for him to send the bank a receipt and it gives credit to his account. The payments referred to in these two exhibits 8 and 9 are the payments of the taxes for 1902 levied on the assessment in controversy herein.

Plaintiff here offered in evidence exhibits 8 and 9, which were objected to as incompetent, immaterial and irrelevant.

The said exhibits are as follows:

EXHIBIT 8.

DES MOINES, IOWA, *Oct.* 2, 1903.

A. W. Layman, Esq., Treasurer of Polk County, City.

DEAR SIR: We have this day credited your account $1,182.92 in payment of the second installment of personal taxes of the Peoples Savings Bank, Des Moines, Iowa, for the year 1902, as shown by the tax receipt forwarded to us by you, including the taxes on Sixty Thousand ($60,000.00) Dollars of United States Government bonds owned by this bank January 1, 1902, which taxes on said bonds I hereby pay under protest for the reason that I believe same are not subject to taxation and I hereby reserve the right of this bank to resort to legal proceedings or take any necessary steps hereafter to recover the amount of taxes paid on said bonds by this bank this day.

Yours truly, C. H. MARTIN, *Cash.*

25 Received the above notice this 2d day of October, 1903.

A. W. LAYMAN,
Treasurer of Polk County.

EXHIBIT 9.

DES MOINES, IOWA, *April* 1, 1903.

A. W. Layman, Esq., Treasurer of Polk County, City.

DEAR SIR: We have this day credited your account $1,182.92 in payment of the first installment of personal taxes of the Peoples Savings Bank, Des Moines, Iowa, for the year 1902, as shown by tax receipt forwarded to us by you, including the taxes on Sixty Thousand ($60,000.00) Dollars of United States Government bonds, owned by this bank January 1, 1902, which taxes on said bonds I hereby pay under protest for the reason that I believe same are not subject to taxation and I hereby reserve the right of this bank to resort to legal proceedings or take any necessary steps hereafter to recover the amount of taxes paid on said bonds by this bank this day.

Yours truly, C. H. MARTIN, *Cash.*

Received the above notice, this 1st day of April, 1903.

A. W. LAYMAN,
Treasurer of Polk County.

Thereupon the plaintiff rested.

Defendants' Evidence.

JACOB G. BECK, a witness on the part of the defendants, testified as follows:

I reside in the city of Des Moines and was deputy assessor from 1896 or 1897 until January 1, 1903.

Q. I hand you exhibit No. 3, being assessment roll, being
26 assessment of the Peoples Savings Bank for the year 1902, showing an item, corporation stock $122,871.00, and ask you what is the basis of that assessment; what does the term, "corporation stock," represent?

Objected to as incompetent, because in the first place this exhibit is not the assessment roll, but is the notice that was sent to the bank, and the assessment roll does not show that there was any assessment made on account of corporation stock, and the question therefore assumes that the assessment roll showed that, and as incompetent for the further reason that parol evidence is not competent to contradict or vary the record of the assessment as made by the proper assessing officers.

Q. Did you make that assessment?

A. Yes, sir.

Q. Will the reporter now read the preceding question.

(Reporter reading.) Objection renewed.

A. What I considered the value of their stock, what I considered it to be worth, after deducting their real estate, at that time.

By the stock of the bank I mean the shares of stock of the People's Savings Bank.

The COURT: Was this other corporation stock that was held by the bank included in that?

The WITNESS: No, sir. That is, you mean stocks of other corporations?

The COURT: Yes, sir.

The WITNESS: No, sir, otherwise than if those helped to make up the value of their stock; that would be the only way they would be included.

I helped to make up the assessor's book for 1902. The assessment shown on page 115, No. 6575, in the Assessor's Book 1902, City of Des Moines, Second District, Polk county, Iowa, for $122,871.00 against People's Savings Bank is based upon just what I told you, upon the value of the stock of their bank, less the real estate in my opinion, at that time.

Q. The value of the shares of stock.
27 A. The value of the shares of stock of the bank.

Cross-examination:

I deducted the value of the real estate. I did not deduct the value of the stock of other corporations that this bank might own and I did not deduct the value of the government bonds.

The COURT: As I understand you, you did not pay any attention to stock in other corporations?

The WITNESS: Other than if they would enhance or make the value of their own stock worth more or less.

The COURT: To ascertain the value of the bank stock?

The WITNESS: Yes, sir.

The COURT: Your assessment was fixed on that?

The WITNESS: They furnished a statement that helped me to arrive at what I thought was the value, and other things.

This exhibit 4 is the stub of the assessment roll. Attached to each of these stubs is the blank notice which we give to the property owner. I did not make out exhibit 4. It was all made out by Mr. French, the assessor, except the figures in lead pencil. I should judge the figures in lead pencil are $122,871. I do not know who put them in. I could only give an opinion. I could not say positively whose figures they are, but it was some of the clerical force in the office. I could not say certainly who scratched out this $55,171.98 except that it was some one in the office under the instructions of the assessor. When I sent out this exhibit 3 I did not make out a new stub.

With reference to this assessor's book I notice that where the figures $122,871 appear under the head of moneys and credits there has been an erasure. This $122,871 looks like Miss Hall's
28 figures. I would not think that the original of this item, under moneys and credits, was $55,171.98, corresponding with the original assessment. I think it was not because it would have been in here if it was, (indicating) in the actual value column, if it had been $55,000 over there. That would be my judgment. I think it would have been scratched in both places.

There were changes made in the assessments of some of the other banks in Des Moines at about that time. There were not any savings banks here in Des Moines which owned government bonds whose assessments were not changed just about that time. It was an oversight if there were. And in each instance the assessments of these savings banks, when they were changed, were increased and the increase was probably to an amount equal to their holdings of government bonds.

As to whether when I came to change this assessment it was my opinion that it was too low because it did not include government bonds, it was my opinion that it was a proper assessment when I made it.

Q. I have no doubt of that, but this assessment that was shown by the assessment roll was originally $55,171.98, and you increased that to $122,871.00. You thought that this first assessment was wrong because it didn't include the government bonds?

A. They had been deducted from the value of their stock at that time; yes, sir.

Q. You evidently thought they ought to be included?

A. After I consulted with the city attorney I thought that they ought to be assessed for the value of their shares of stock irrespective of their government bonds.

Q. Without taking the bonds into account and deducting them?

29 A. Yes, sir.

Q. Just about this time this question had been referred to the city attorney?

A. Yes, sir.

Q. He had given an opinion saying these bonds ought not to be deducted in making this assessment?

A. I don't know. His opinion to me wasn't about that. It was simply as to how to make the assessment.

When I discovered that I had apparently made the assessments on an erroneous basis, because I had deducted these bonds, they were changed right through.

With reference to the books, the assessment roll book is the stub book and is the book that is carried by what we call field men, the men actually making the assessments.

Q. You make the assessment on the stub, and then tear off the corresponding notice notifying the property owner?

Objected to as incompetent, irrelevant and immaterial.

A. Make a copy of it, yes, sir.

From these assessment roll books the clerical force in the assessor's office makes up the assessor's book.

Thereupon the defendant rested.

Thereafter and on the second day of December, 1903, the court entered in this cause the following

Decree.

Now on this second day of December, 1903, being the September term of this court, this cause came on for hearing in regular order, the plaintiff appearing by its attorney, N. T. Guernsey, and the defendants appearing by W. H. Bremner, city solicitor. After hearing the evidence and arguments of attorneys, and being fully advised in the premises, the court finds that the equities are with the defendants.

Therefore, be it ordered, adjudged and decreed that this
30 appeal be and is hereby dismissed and the costs of this action taxed to the plaintiff, to all of which the Peoples Savings Bank then and there at the time duly excepted, and by the consent of the parties, the said Peoples Savings Bank is granted sixty days from this date within which to file its bill of exceptions herein.

Thereafter the transcript of the testimony in the said cause was duly certified and filed in the office of the clerk of the court below. The said transcript was certified by the judge, who was the presiding

judge upon the trial of the said cause in the court below, and the certificate was in such form as to fully preserve and make a matter of record all of the testimony either introduced or offered on the trial of the said cause, and all proceedings had upon the trial of the said cause, and all rulings of the court on the said trial, and all motions and objections and exceptions taken by the parties, and all rulings on the same, and all of the said matters were duly made a matter of record in the said cause.

That thereafter on the twenty-second day of January, 1904, the said evidence, including all of the evidence introduced or offered on the trial of the said cause, together with the said certificate, was filed in the office of the clerk of the said district court.

Appeal.

Thereafter and on the twentieth day of February, A. D. 1904, the said Peoples Savings Bank duly perfected its appeal to the supreme court of Iowa from the judgment and decree of the court below, and from all of the rulings in the court below in this cause adverse to the appellant; that said appeal was duly perfected in all
31 respects as required by law and the rules of the said supreme court and that due and legal notice of the said appeal was given and filed in the office of the clerk of the court below and that the clerk of the court below was secured his fees for a transcript.

The foregoing is a complete abstract of all of the proceedings, pleadings, evidence, motions, rulings, objections and exceptions filed or taken in the above entitled cause; and contains all of the evidence offered or introduced on the trial thereof, together with the decree of the court rendered therein, as well as the pleadings and the notice of appeal.

N. T. GUERNSEY,
Attorney for Appellant.

The actual cost of printing the foregoing abstract is the sum of $36.07.

N. T. GUERNSEY,
Attorney for Appellant.

31*a* And that thereafter and on or about the 29th day of September A. D. 1904, there was filed in the said cause the appellant's assignment of errors in the words and figures following to-wit:

31*b* Service of the within assignment of errors is hereby accepted and receipt of two copies thereof acknowledged this 29th day of September, A. D. 1904.

W. H. BREMNER,
By M. H. COHEN, *Ass't*
Attorney for Appellee.

In the Supreme Court of Iowa, September Term, A. D. 1904. In Equity.

PEOPLES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

Appeal from Polk District Court.

Hon. James A. Howe, Trial Judge.

N. T. Guernsey, Attorney for Peoples Savings Bank, Appellant.
W. H. Bremner, M. H. Cohen, R. B. Alberson, Attorneys for Appellee-.

Filed Sept. 29, 1904.

JNO. C. CROCKETT,
Clerk Supreme Court.

32 *Assignment of Errors.*

The appellant, the Peoples Savings Bank, states that there is manifest error upon the face of the record in this cause, and assigns the following errors:

First: That the court below erred in not deducting from the assessment of the appellant the value of the bonds of the United States of America held by it on January 1, 1902, amounting to $62,060.00.

Second: That the court below erred in not deducting from the amount of the said assessment the sum of $840.00 on account of the shares of the Oak Park Land Company owned by the appellant January 1, 1902.

Third: That the court below erred in not deducting from the said assessment the value of the shares of the Citize National Bank of Des Moines, Iowa, owned by the appellant January 1, 1902.

Fourth: That the court below erred in not deducting from the said assessment the value of the shares of the Des Moines Insurance Company owned by the appellant January 1, 1902.

Fifth: That the court below erred in not deducting from the said assessment the value of the shares of the State Trust Company owned by the appellant January 1, 1902.

Sixth: That the court below erred in not holding section 1322 of the code of Iowa to be void, in so far as it authorizes the assessment of bonds of the United States of America for taxation because

33 (*a*) Such assessment is prohibited by the statutes of the United States; and,

(*b*) Any law authorizing such assessment is in contravention of the constitution of the United States.

Seventh: That the court below erred in not holding section 1322 of the code to be void if or in so far as the said section authorizes

the taxation of savings banks upon property not owned by them, but owned by their shareholders.

Eighth: That the court below erred in not holding that section 1322 is in fact a provision for the taxation of the property of savings banks and in not holding that under this section bonds of the United States of America, should be deducted, and should not be assessed for taxation.

Ninth: That the court below erred in confirming the assessment appealed from by the Peoples Savings Bank.

N. T. GUERNSEY,
Attorney for Appellant.

I hereby certify that the actual cost of printing the foregoing assignment of errors is $2.70.

N. T. GUERNSEY,
Attorney for Appellant.

34 And that thereafter and on or about the 24th day of September A. D. 1904, there was filed in the said cause a motion to advance the same, and on the 21st day of September, 1904, a stipulation, which motion and stipulation are in the words and figures as follows, to-wit:

35 In the Supreme Court of Iowa, September Term, A. D. 1904.

PEOPLES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

Motion to Advance and to Assign for Hearing Together.

Come now the appellants in the above entitled causes and move that the same be advanced and assigned for hearing at such day as the court may fix in the third period of the present term of this court, and that when so heard the said cases be heard together and that but one printed brief be required in behalf of the appellants in the said cases, and that but one printed brief be required in behalf of the appellees therein, and as grounds for the said motion respectfully show to the court as follows, to-wit:

First: The question involved in each of the said cases is whether the provisions of the code relative to the taxation of savings banks as construed by this court, as affecting the taxation of gov-
36 ernment bonds, is in contravention of the statutes of constitution of the United States.

This is a question of general and public interest affecting the taxing power, of the state, and its revenues, and should promptly be decided, and cannot be presented to the supreme court of the United States for final decision until first passed upon by this court.

Second: The cases involve but the one controverted question which we have indicated, and, consequently, can properly be submitted together, all of the parties on each side joining in the same brief instead of requiring separate briefs by each party.

N. T. GUERNSEY,
Attorney for Peoples Savings Bank, Appellant.
BERRYHILL & HENRY,
Attorneys for Des Moines Savings Bank, Appellant.
DALE & HARVISON,
Attorneys for Home Savings Bank, Appellant.

Endorsed as follows: Filed Sept. 24, 1904. Jno. C. Crockett, Clerk Supreme Court.

37 In the Supreme Court of Iowa, September Term, A. D. 1904.

PEOPLES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellee-.

Stipulation.

It is stipulated by the parties to the above entitled causes that the same may be advanced, and set for hearing upon such day in the third period of the present September term, 1904, of the said court, as the court may designate, and that they may be submitted together upon one printed brief in behalf of all of the appellants and a single brief in behalf of the appellees.

If the said cause is so advanced, the appellants shall serve their brief on or before the 1st day of October, 1904, and the appellees' brief shall be served upon the appellants on or before the 1st day of

November, 1904, the appellants' reply to be served the usual
38 time before the hearing.

N. F. GUERNSEY,
Attorney for Peoples Savings Bank, Appellant.
BERRYHILL & HENRY,
Attorneys for Des Moines Savings Bank, Appellant.
DALE & HARVISON,
Attorneys for Home Savings Bank, Appellant.
W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
Attorneys for City of Des Moines, and the City Council of said City, Acting as a Board of Review.

Endorsed as follows: Filed Sept. 21st, 1904. Jno. C. Crockett, Clerk, Supreme Court.

39 And that thereafter there was entered in the said cause an order sustaining the said motion, in the words and figures following to-wit:

23525.

PEOPLES SAVINGS BANK ET AL., Appellants,
vs.
CITY OF DES MOINES.

Appellants' motion to advance having been fully considered by the court is sustained.

It is ordered that cause be advanced and that it be docketed and submitted during the third period.

40 That thereafter and on or about the 17th day of December 1904, the supreme court of Iowa filed its opinion in the said cause affirming the judgment of the court below, which opinion is in the words and figures following to-wit:

41 Supreme Court of Iowa.

Filed Dec. 17, 1904.

PEOPLE'S SAVINGS BANK, Appellant,
vs.
THE CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

THE DES MOINES SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

THE HOME SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

Appeal from the judgment of the district court affirming the action of the board of review of the City of Des Moines in refusing to deduct from the assessment of the appellant banks upon its shares of stock the amount of government bonds owned by them.

N. T. Guernsey, for People's Savings Bank.
Berryhill and Henry, for Des Moines Savings Bank.
Dale & Harvison, for Home Savings Bank.
W. H. Bremner, M. H. Cohen & R. B. Alberson, for Appellees.

42 *Per Curiam.*—This court is fully committed to the doctrine that the general exemption from state taxation with which the bonds of the United States are clothed, does not entitle the bank to deduct the amount of such bonds from the value of the shares of their stock which are assessed to it for the purposes of taxation under Code section 1322.

German Savings Bank *vs.* Burlington 118 Iowa 84.
National State Bank *vs.* Burlington 119 Iowa 696.
1st National Bank *vs.* Independence 122 Iowa 482.

We are favored by an elaborate and able argument for appellants insisting that such taxation cannot be upheld especially as applying to savings banks, and that this position has the support of the federal supreme court whose holdings in the last resort must govern the rights of the parties. These propositions were presented quite fully in the cases above cited and we are still satisfied with the conclusions there reached. Those cases have all been decided within such recent period that a rediscussion of the subject and of the bearings of the various precedents cited is not called for.

The judgment of the district court is affirmed.

43 And that thereafter and on the said 17th day of December A. D. 1904, the supreme court of Iowa, rendered its final judgment in the said cause in the words and figures following to-wit:

44 Supreme Court of Iowa.

STATE OF IOWA, *ss:*

Be it remembered, that on the 17th day of December, A. D. 1904, the following proceedings, among others, were had and entered of Record in the Supreme Court of Iowa, to-wit:

Appeal from Polk District Court.

No. 23525.

PEOPLES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

In this cause, the Court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal taxed at $28.25 and that execution issue therefor.

45 And that thereafter and on or about the 13th day of July, A. D. 1905, the Peoples Savings Bank filed in the office of the clerk of the supreme court of Iowa its petition for a writ of error in the words and figures following to-wit:

46 In the Supreme Court of the United States.

PEOPLES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Petition for Writ of Error to the Supreme Court of Iowa.

To the Honorable John C. Sherwin, Chief Justice of the Supreme Court of Iowa:

Your petitioner the Peoples Savings Bank now comes and respectfully states:

That it is and was at all the times hereinafter mentioned, a corporation duly created, organized and existing under and by virtue

of the laws of the state of Iowa, for the transaction of a banking business; and that its principal place of business is, and was at all of the times hereinafter mentioned, at the city of Des Moines in the said state.

That on or about the 9th day of April, A. D. 1902, the duly elected and qualified assessor of the said city of Des Moines, who was at that time the proper person under the laws of the state of Iowa, to assess for taxation the property of the plaintiff in error, did assess for taxation the property of the plaintiff in error in the sum of $55,171.98, and that thereafter and on or about the 22nd day of April, 1902, the said assessor increased said assessment of the property of the plaintiff in error by the sum of $67,699.02, and made the assessment upon the said property of the plaintiff in error the sum of $122,871.00, instead of the sum of $55,171.98.

47 That the said increase of $67,699.02 in the assessment of the property of the plaintiff in error was an assessment, for the purposes of taxation under the laws of the state of Iowa, of bonds of the United States of America owned by the plaintiff in error, said bonds being bonds, issued by the said United States of America pursuant to the war revenue act of Congress approved June 13, 1898 (30 Statutes at large, page 488), known as coupon 3's.

That of the capital stock of the plaintiff in error there was actually invested in the said bonds, upon the date as of which under the laws of the state of Iowa, the assessments for taxation for the year A. D. 1902 were made, the sum of $62,060, and that the said increase in the said assessment was an assessment for the purpose of taxation of the said bonds of the United States of America so owned by the plaintiff in error.

That after the said assessment had been so increased the plaintiff in error, in accordance with the laws of the state of Iowa in such cases made and provided, appealed to the city council of the said city of Des Moines, sitting as a board of review, or of equalization, and thereafter and on or about the 29th day of April, 1902, the said city council, so sitting, refused to annul said increase of assessment and overruled the objections and appeal of the plaintiff in error, and confirmed and approved the said assessment in the said sum of $122,871.

That thereafter in accordance with the laws of the state of Iowa, in such cases made and provided, the plaintiff in error appealed from the final decision of said city council, so sitting as a board of review or of equalization, to the district court of the state of Iowa, in and for Polk county, where said cause was tried to the court on its merits as an equity cause, without special assignments of error; and such proceedings were had therein as that, on or about the 2nd day of December A. D. 1903, the said district court entered of record its final decree in the said cause dismissing the appeal of this

48 plaintiff in error from the said assessment and confirming the same, and rendering judgment against this plaintiff in error for the costs of the said appeal; to all of which this plaintiff in error then and there at the time duly excepted. That thereafter in accordance with the laws of the state of Iowa, in such cases made and provided, this plaintiff in error appealed from said final decree of the

said district court in the said matter, to the supreme court of Iowa, the said supreme court being the highest court at law or in equity in the said state of Iowa, in which a decision could be had in said cause.

That said cause was triable *de novo* in the said supreme court of Iowa, without assignments of error, and was submitted to the said supreme court of Iowa upon what, under the rules of the said court, is known as a printed abstract of the record of said cause, which abstract contained all pleadings and papers filed therein, all evidence offered upon the trial thereof, and all rulings and orders made upon said trial in the said district court, and all proceedings had or done upon the said trial, together with the final judgment and decree rendered and entered of record in the said cause in said district court, and the taking of the appeal therefrom.

That thereafter such proceedings were had in the said cause in the said supreme court as that, after having been duly argued by counsel for both the plaintiff and defendant in error, the same was finally submitted to the said supreme court of Iowa, on the 22nd day of November A. D. 1904, and thereafter and on or about the 17th day of December A. D. 1904, the said supreme court of Iowa, filed in said cause, its opinion affirming the judgment and decree of the said district court (which opinion is reported at Volume 101 Northwestern Reporter, page 867); and in pursuance of said opinion, on the 17th day of December A. D. 1904, a final judgment and decree was rendered and entered of record in the said cause by the said supreme court of Iowa, in favor of the parties hereinbefore
49 named as defendants in error, and against this plaintiff in error, affirming the said judgment and decree of the said district court and rendering judgment against this plaintiff in error for the costs upon said appeal.

That the questions submitted to the said Supreme Court of Iowa, for decision and decided against this plaintiff in error by that court in this cause were:

First: Do the statutes of the state of Iowa in such cases made and provided, and especially section 1322 of the code of 1897 of Iowa, require the assessment for purposes of taxation of bonds of the United States of America, constituting a part of the assets of the plaintiff in error in which its capital is invested, and are these statutes therefore void because in contravention of Section 8, Article I, of the Constitution of the United States and of the statutes of the United States?

Second: Was the assessment in controversy void because it was an assessment for taxation levied upon bonds of the United States of America, owned by the plaintiff in error, in contravention of the provisions of Section 8, Article I, of the Constitution of the United States, and of the statutes of the United States?

Third: Do the statutes of the state of Iowa, in such cases made and provided, and especially section 1322 of the Code of 1897 of Iowa, require the assessment to the plaintiff in error, for the purposes of taxation, of the shares of its stock owned by its shareholders, and the exaction from it of the taxes levied on said assessments, without

provision for the reimbursement of the plaintiff in error, and are these statutes therefore void, because in contravention of the provisions of Section I, Article XIV of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law, and that no state shall deny to any person the equal protection of the laws?

50 *Fourth:* If it be considered an assessment upon the shares of its stock owned by the shareholders of the plaintiff in error, was the assessment in question, and are the taxes levied thereon void because to assess to the plaintiff in error for the purposes of taxation the property of others and to exact from it taxes levied upon such assessments, without any provision for the reimbursement of the plaintiff in error on account of such taxes, would be to take the property of the plaintiff in error without due process of law and to deny to it the equal protection of the laws in contravention of Section I, Article 14, of the Amendments to the Constitution of the United States?

That the final judgment and decree so rendered by the supreme court of Iowa is unwarranted in law as plaintiff in error is advised.

Plaintiff in error presents herewith a bond in proper form and an assignment of errors, and prays that a writ of error may be allowed so as to have a review in the supreme court of the United States of said decision, and judgment and decree of said supreme court of Iowa, and that a citation issue in due form and course to require each of the defendants above named to appear to said writ of error and show cause why such judgment of the said supreme court should not be corrected as provided by law, and the rules of this court.

PEOPLES SAVINGS BANK,
Plaintiff in Error,
By N. T. GUERNSEY, *Its Attorney.*

N. T. GUERNSEY,
Attorney for Plaintiff in Error.

STATE OF IOWA, *Polk County, ss:*

I, N. T. Guernsey, being duly sworn on oath depose and say that I was the attorney for the plaintiff in error, the Peoples Sav-
51 ings Bank, throughout all of the proceedings above referred to, from the proceeding before the Board of Review to and including the final proceedings before the supreme court of the state of Iowa; that I have personal knowledge of the contents of the foregoing application for a writ of error, and that the matters and things therein set forth are true as I verily believe.

N. T. GUERNSEY.

Subscribed and sworn to before me by the said N. T. Guernsey, on this 12th day of July A. D. 1905.

[NOTARIAL SEAL.] F. A. BROWN,
Notary Public in and for
Polk County, Iowa.

Writ of error allowed this 12 day of July A. D. 1905.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

52 [Endorsed:] Peoples Savings Bank *vs.* City of Des Moines *et al.* Petition for Writ of Error. Filed Jul. 13 1905 Jno. C. Crockett, Clerk Supreme Court.

53 And that with the said petition for a writ of error and on the same day the said Peoples Savings Bank filed in the office of the said clerk, its assignment of errors, in the words and figures following to-wit:

54 In the Supreme Court of the United States.

PEOPLES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Assignment of Errors.

Comes now the plaintiff in error, the Peoples Savings Bank, and avers that the judgment and decree rendered by the supreme court of Iowa against the plaintiff in error in the above entitled cause on the 17th day of December A. D. 1904, is erroneous, and against the rights of the plaintiff in error; and as and for its assignment of errors upon which it relies for a review and reversal of said judgment and decree, plaintiff in error respectfully shows to the court that there is manifest error upon the face of the record, and in said judgment and decree of the supreme court of Iowa, and the record and proceedings in said cause in the following respects, to-wit:

First: That the supreme court of Iowa erred in rendering its judgment and decree affirming the assessment for taxation made against the plaintiff in error, in controversy in this cause, and affirming the said judgment and decree of the district court of the state of Iowa, in and for Polk county.

Second: That the supreme court of the state of Iowa erred in holding that the assessment complained of was not an assessment for taxation levied upon bonds of the United States which were the property of the plaintiff in error.

Third: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 8, Article I of the Constitution of the United States.

55 *Fourth:* That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 3701 of the Revised Stat-es of the United States.

Fifth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not

exempt from taxation under the provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

Sixth: That the supreme court of Iowa erred in holding that the property of the shareholders of the plaintiff in error should be assessed and taxed to the plaintiff in error, without provision for its reimbursement for taxes so paid, by the owners of the property taxed, because,

(*a*) To so hold is a denial to the plaintiff in error of the equal protection of the laws, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States whic- provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

(*b*) To subject the plaintiff in error to such taxation constitutes a taking of the property of the plaintiff in error without due process of law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of his property without due process of law.

Seventh: That the Supreme Court of Iowa erred in holding that the assessment in question could properly be made under section 1322 of the Code of 1897, of Iowa, because:

(*a*) If the said section authorizes the assessment of bonds of the United States for purposes of taxation the same is void because in contravention of section 8, Article I, of the Constitution of the
56 United States.

(*b*) If said section authorizes the assessment for purposes of taxation of bonds of the United States the same is void because in contravention of section 3701 of the Revised Statutes of the United States.

(*c*) If said section authorizes the assessment for taxation of said bonds of the United States the same is void because in contravention of the express provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13th, 1898.

(*d*) If the said section authorizes the assessment for taxation of the bonds of the United States which were sought to be assessed, the same is void because in contravention of the provision of Section I, Article XIV of the Amendments to the Constitution of the United States that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States because under both the laws and Constitution of the United States plaintiff in error was entitled to hold the bonds in question exempt from taxation by the State of Iowa.

(*e*) If the said section authorizes the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of its shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of the provision of Article XIV

of the Amendments to the Constitution of the United States which provides "nor shall any state deprive any person of life, liberty or property without due process of law" there being no provision in the laws of the state of Iowa for the reimbursement of the plaintiff in error for taxes so exacted from it.

(*f*) If the said section authorizes the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of the shareholders, and the exaction
57 from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of Section I of Article XIV of the Amendments to the Construction of the United States which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The laws of Iowa provide that all property shall be taxed to the owners thereof, and where corporations other than savings banks are made primarily liable for taxes imposed upon their shares of stock, provide for their reimbursement, but these laws make no provision for the reimbursement of savings banks on account of taxes levied against the shares of their stock and exacted from the banks.

Eighth: That the Supreme Court erred in holding that the plaintiff in error is subject to taxation, without reimbursement upon shares of stock not owned by it, because

(*a*) Such taxation amounts to a taking of the property of the plaintiff in error without due process of law, in contravention of the provision of Section I, Article XIV of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law.

(*b*) Such taxation amounts to denial to the plaintiff in error of the equal protection of the laws, in contravention of the provision of Section I, of Article XIV of the Amendments to the Constitution of the United States, that no state shall deny to any person within its jurisdiction the equal protection of the laws.

Ninth: That the supreme court of Iowa erred in refusing to deduct from the assessment of the plaintiff in error the item of $4040.00 on account of stocks in other corporations owned by it.

Tenth: That the supreme court of Iowa erred in refusing to deduct from the assessment in controversy the item of $8480.00 on account of real estate owned by the plaintiff in error.

58 Wherefore plaintiff in error prays that said order and final judgment of said supreme court of Iowa be reversed with costs of suit.

Dated this 12th day of July, A. D. 1905.

PEOPLES SAVINGS BANK,
Plaintiff in Error,
By N. T. GUERNSEY, *Its Attorney.*

N. T. GUERNSEY,
Attorney for Plaintiff in Error.

59 [Endorsed:] 9. 23525. Peoples Savings Bank *vs.* City of Des Moines *et al.* Assignment of Errors. Filed Jul- 13, 1905. Jno. C. Crockett, Clerk Supreme Court.

60 And on the said 13th day of July 1905, the said Peoples Savings Bank filed in the office of the said clerk its writ of error in the words and figures following to-wit:

61 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Peoples Savings Bank appellant and the City of Des Moines and the City Council of said City as a board of review, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of,
62 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Peoples Savings Bank as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of July, in the year of our Lord one thousand nine hundred and five.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk of the Circuit Court for the Southern District of Iowa,
By MAZE VERNON, *Deputy.*

Allowed by
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

Fee for writ $1.00 paid.

E. R. MASON, *Clerk,*
By MAZE VERNON, *Deputy.*

63 [Endorsed:] 9. 23525 Peoples Savings Bank, Plaintiff in Error, *vs.* City of Des Moines & the City Council of said City as a board of review, Defendants in Error. Writ of Error. Filed Jul- 13 1905 Jno. C. Crockett Clerk Supreme Court.

64 And on the same day, it filed in the office of the said clerk, its bond, in the words and figures following to-wit:

65 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

"The regular quarterly meeting of the Board of Trustees of the American Surety Company of New York was held at the Company's office, No. 100 Broadway, in the City of New York, on Wednesday, January 18, 1905, at 12 o'clock noon.

* * * * * * *

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York:

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Wednesday, December 21, 1904, for the purpose of nominating officers of the Company, * * * for the ensuing year, beg leave to report as follows:

"We nominate for

* * * * * * *

Resident Vice Presidents at Des Moines, Iowa:

Jos. G. Rounds.
Chas. H. Martin.
Arthur Reynolds.

Resident Assistant Secretaries at Des Moines, Iowa:

E. D. Samson.
W. H. Baily.

* * * * * * *

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, and for the members of the Committee on Accounts, as recommended by the Nominating Committee for the ensuing year; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year.

* * * * * * *

"The folowing resolution was adopted:

"Resolved, that the Resident Vice-Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK, *County of New York, ss:*

I, F. J. Parry, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 27th day of February, 1905.

[Seal American Surety Company of New York.]

F. J. PARRY,
Assistant Secretary.

66 Know all Men by these presents, That we, the Peoples Savings Bank, a banking corporation organized under the laws of Iowa, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the City of Des Moines and the City Council of said city as a board of review in the full and just sum of Five Hundred 00/100 dollars, to be paid to the said City of Des Moines and the City Council of said City as a board of review its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of July, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a session of the Supreme Court of the State of Iowa in a suit depending in said Court between the said Peoples Savings Bank as appellant and the said City of Des Moines and the City Council of said city as a board of review, as appellees, a *a* judgment and decree was rendered against the said Peoples Savings Bank and the said Peoples Savings Bank having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment and decree in the aforesaid suit, and a citation directed to the said City of Des Moines and the City Council of said city as a board of review citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Peoples Savings Bank shall prosecute writ of error to effect, and

answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal Peoples Savings Bank, Des Moines, Ia.]

PEOPLES SAVINGS BANK, [SEAL.]
By FRANK P. FLYNN, *Ass't Cashier.*

[Seal American Surety Company, New York.]

AMERICAN SURETY COMPANY OF NEW YORK, *Surety,* [SEAL.]
By J. G. ROUNDS, *Res. Vice-Pres't.*

Attest:
E. D. SAMSON, *Res. Ass't Sec'y.*

Sealed and delivered in presence of—
F. T. VAN LIEW.
E. A. SHIRINGER.

Approved by—
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

67 [Endorsed:] 9. 23525. Peoples Savings Bank Plaintiff in Error *vs.* City of Des Moines & the City Council of said City as a board of review, Defendants in Error. Bond. Filed Jul. 13 1905 Jno. C. Crockett Clerk Supreme Court.

68 And on the 14th day of July, A. D. 1905, it filed in the office of the said clerk, a citation and the return of service, in the words and figures following to-wit:

69 UNITED STATES OF AMERICA, *ss:*

To the City of Des Moines, and the City Council of said City as a board of review, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the supreme court of the state of Iowa wherein The Peoples Savings Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Sherwin, Chief Justice of the Supreme Court of Iowa, this 12th day of July, in the year of our Lord one thousand nine hundred and five.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

70 [Endorsed:] Peoples Savings Bank, Plaintiff in Error, *vs.* City of Des Moines & The City Council of said City as a board of review, Defendants in Error. Citation. Filed Jul- 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

On this 13th day of July, in the year of our Lord one thousand nine hundred and five, personally appeared A. G. Rippey before me, the subscriber, Chas. Hutchinson a notary public in and for Polk County, Iowa, and makes oath that he delivered a true copy of the within citation to Geo. W. Mattern, Mayor of the City of Des Moines, and to N. B. Vertrees, City Clerk of the City of Des Moines, and Wm. H. Bremner, attorney for the defendants in error in the court below.

A. G. RIPPEY.

Sworn to and subscribed the 13th day of July, A. D. 1905.

[Notarial Seal Chas. Hutchinson, Iowa.]

CHAS. HUTCHINSON,
Notary Public in and for Polk County, Iowa.

Service of the within citation is hereby accepted July 13, 1905.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
City Attorneys for City of Des Moines & Attorney for City of Des Moines & the City Council of said City as a Board of Review.

71 In the Supreme Court of the State of Iowa.

23525.

PEOPLES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Return of Clerk on Writ of Error.

UNITED STATES OF AMERICA, *State of Iowa, ss:*

I, Jno. C. Crockett, Clerk of the Supreme Court of Iowa, in pursuance to the command of the writ of error in the above entitled cause, to which this certificate is attached, do hereby certify and return that the above and foregoing is a true and correct transcript of the record, opinion and final judgment of this court in the case of the Peoples Savings Bank, plaintiff in error, *vs.* the City of Des Moines, and the City Council of the said city as a Board of Review, defendants in error as full, true and complete as the same are now of record and on file in my office.

I further certify that the assignment of errors, bond, petition for allowance of writ of error, and citation, with return of service and acceptance thereof, are attached hereto in the original form, true and correct copies of the same being retained on file in this office.

I further certify that the attached writ of error was duly served upon me by lodging with me a copy thereof on the 13th day of July, A. D. 1905.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court, on this 14 day of July, A. D. 1905.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court of Iowa.

Endorsed on cover: File No. 19,853. Iowa supreme court. Term No. 83. Peoples Savings Bank, plaintiff in error, *vs.* The City of Des Moines and The City Council of said City as a Board of Review. Filed July 24, 1905. File No. 19,853.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 92.

DES MOINES SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 29, 1905.

(19,864.)

(19,864.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 92.

DES MOINES SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Caption	A	1
Appellant's abstract of record	B	1
Petition	1	1
Amendment to petition	2	2
Second amendment to petition	4	3
Evidence	5	4
Testimony of Simon Casady	5	4
Offers of exhibits	7	5
Exhibit 1—Assessment roll, 1902	8	5
2—Statement	9	6
3—Notice of appeal	9	6
Admission and offers	10	7
Exhibit 4—Assessment roll, 1902	12	7
6—Assessment roll, 1902	14	8
Admission	15	9
Section 20, report of code commission	15	9
Plaintiff rests	16	9
Exhibit 5—Protest	16	10
Admission	16	10
Testimony of Jacob G. Peck	17	10
Defendant rests	21	12
Offers and admissions	21	12

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 19, 1906.

	Original.	Print.
Decree	21	13
Appeal	22	13
Assignment of errors	24	14
Opinion	27	16
Judgment	29	17
Petition for writ of error	30	17
Assignment of errors	37	21
Writ of error	42	23
Citation and service	45	25
Bond	47	25
Clerk's certificate	50	26

A DES MOINES SAVINGS BANK, Plaintiff,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendant-.

B Due, timely and legal service of the within abstract is hereby acknowledged this 20 day of June A. D. 1904.
W. H. BREMNER,
M. H. COHEN,
Attorneys for Appellees.

In the Supreme Court of Iowa, September Term, A. D. 1904. In Equity.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellees.

Filed June 21st, 1904.
JNO. C. CROCKETT,
Clerk Supreme Court.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

Berryhill & Henry, Attorneys for Appellant.
W. H. Bremner, M. H. Cohen and R. H. Alberson, Attorneys for Appellees.

Appellant's Abstract of Record.

1 On the 29th day of April, 1902, plaintiff filed in Polk district court the following

Petition.

Plaintiff states:

Paragraph 1. That it is a corporation organized as a savings bank under the laws of the state of Iowa, having its place of business in the city of Des Moines in said state, and the defendant, the City of Des Moines, is a city of the first class, organized under the laws of said state.

Par. 2. That the assessor of the defendant city, in making up his assessment of personal property in the city of Des Moines, subject to taxation on the first day of January, 1902, assessed this plaintiff with corporation stock in the amount or value of three hundred and sixty-seven thousand, and eight hundred and twenty-seven ($367,827) dollars. In making said assessment, said assessor refused to deduct from said amount the sum of one hundred and eighty-three thousand, eight hundred and eleven and 65-100 ($183,811.65) dol-

lars, being the amount of United States bonds held by said bank as a part of its capital.

Par. 3. That said assessment so made by said assessor coming on before the city council of said city as a board of review as provided by law on the 22d day of April, 1902, plaintiff then made complaint before said board of review of the action of said assessor in making the assessment aforesaid, and demanded that said assessment be changed by deducting therefrom the sum of $183,811.65, being the amount of U. S. bonds held by it aforesaid on the first day of January, 1902, but the said board of review refused to alter or change said assessment. That on the 25th day of April, 1902, plaintiff served upon said board of review by serving Wm. H. Brereton,
2 chairman and presiding officer thereof, a notice of appeal from said action of said board of review.

Wherefore plaintiff asks that the said assessment so made against it may be changed by deducting from said assessment the said sum of $183,811.65, and that it have such other and further relief as equity may require.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

(Duly verified.)

On the 12th day of October, 1903, plaintiff filed the following

Amendment to Petition.

Comes now the plaintiff and by leave of court files this amendment to its petition herein and states:

1. That the only notice to it of an assessment to it, aside from the assessment of its real estate, for the year 1902, was of an assessment for "corporation stock;" that said notice of assessment was given by the assessor of the city of Des Moines, through his deputy.

2. That in such notice there was assessed to plaintiff "corporation stock, $367,827." That such assessment was made upon such corporation stock as was then owned by the plaintiff.

3. That in truth and in fact the plaintiff owned no corporation stock in any sum or value whatever on the first day of January, 1902.

4. Plaintiff further states that the only assessment made against it by the assessor of the city of Des Moines, aside from its real estate, for the year 1902 shown in the assessment books was an assessment on personal property of a total actual value of $367,827, and of the taxable value of $91,957, and the only tax listed against the
3 plaintiff for the year 1902, aside from the tax on its real estate was a tax upon personal property of the taxable value of $91,960.

5. That the law did not permit the assessment of any personal property against this plaintiff and it had no personal property other than its capital and surplus or profits.

6. The plaintiff appeared before the city council as a board of review, as provided by law, on the 22d day of April, 1902, and then made complaint before said board of review of the action of said assessor in assessing it in the sum aforesaid.

7. That said board of review refused to alter or make any change

in such assessment and approved the assessment made by such assessor, which was either an assessment for corporation stock owned by it or other personal property owned by it and was not an assessment to it of the value of its shares of stock.

8. That on the 25th day of April, 1902, plaintiff served upon said board of review by serving Wm. H. Brereton, chairman or presiding officer thereof, a notice of appeal from the assessment made by such board of review.

Wherefore, plaintiff asks that the said assessment so made against it may be wholly set aside as illegal and void, or if that be not done, that the same be changed by taking from such assessment of $183,-811.65 as hereinbefore prayed in its original petition, with such other and further relief as equity may require.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

(Duly verified.)

On the 20th day of October, 1903, plaintiff filed the following

4 *Amendment to Petition.*

Comes now the plaintiff herein and amends its petition to conform to the evidence and in addition to the matters and things set up in its original petition and in a former amendment thereto, it states:

1. That the assessment complained of, as the same appears in the assessment roll of the city assessor for the year 1902, was upon moneys and credits of the plaintiff and the law does not permit any taxation of such moneys and credits or, if such taxation is permitted, the plaintiff was entitled in the ascertainment of the value of such moneys and credits to a deduction of the United States bonds owned by it on the first day of January, 1902.

2. If the assessment in question was upon the shares of stock of the plaintiff as the property of its shareholders, then the levying of such assessment against the plaintiff and its property was in contravention of Sec. one (1), Article XIV of the amendments to the constitution of the United States in that it deprives the plaintiff of its property without due process of law, for that it subjects the property of the plaintiff to a lien and to distraint and sale for the debts of its shareholders without giving plaintiff any right of recovery back from such shareholders and regardless of whether it has any dividends or profits belonging to such shareholders.

3. That if the assessment in question is an assessment upon the shares of stock of the plaintiff, as the property of its shareholders, such assessment is in contravention of Sec. 6. Art. I and Sec. 30, Art. III of the constitution of the state of Iowa, in that no provision is made to enable such shareholders to secure a deduction from such assessment for any debts owing by them, as is allowed by law to owners of other personal property.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

Thereafter, and on the 12th day of October, 1903, said day being one of the regular days of the September term, 1903, of said court, the said matter came on for hearing before Hon. James A. Howe, one of the judges of said court, and thereupon the following proceedings were had and testimony offered, introduced and adduced.

SIMON CASADY, sworn on the part of the plaintiff, testified as follows:

I am vice-president of the Des Moines Savings Bank and have been such for nearly five years. As such official, I had a personal transaction with the deputy assessor of the city of Des Moines with respect to the assessment of the property of the bank as of the 1st of January, 1902.

The paper now shown me, marked Exhibit "1," headed "Assessment roll, 1902, No. 5998," is the statement left us by such deputy assessor of the amount of taxes charged against the bank for the year 1902.

I am personally familiar with the items comprising the assets of the bank on the first of January, 1902.

Q. Did the Des Moines Savings Bank, on the 1st day of January, 1902, own any corporation stock; any stock in any other corporation?

(Objected to as incompetent and immaterial.)

A. No, sir; not that I am aware of. I have no recollection that we did. We didn't deal in any stocks of any kind or character. I think I can say that we had not. We don't buy stocks of any kind or character.

Mr. HENRY (of plaintiff's counsel): I hold in my hand a statement of the assets and liabilities of the bank January 1,
6 1902, made by myself from the books of the Bank, marked Exhibit "2." I do not want to go on the stand myself, but I would be glad to use this or have Mr. Casady upon my statement, if you are willing to admit that it is a correct statement of the totals of the various items; are you willing to do that?

Mr. COHEN (of counsel for defendant): You say you went through the books?

Mr. HENRY: Yes, sir.

Mr. COHEN: Yes, sir; it will be all right.

Q. You may read the statement through Mr. Casady, and see whether it is correct or not?

A. It would not be possible for me to remember the exact figures for that date, but I can give to you from the book that is there for any day. The list that we made out for the assessor ought to be just exactly the figures the book shows. We returned just exactly a copy of the figures on the book, and I presume those are a copy of the figures on the book.

The COURT: Statement of January 1, 1902?

Exhibit "1."

N. B.—All property must be listed at its actual cash value. Taxes are Levied on 25 per cent of same.

Assessment Roll, 1902. No. 5998

Polk County, Iowa, April 22 1902.

Address Des Moines Savings Bank

Twp., Dist. 2nd

Road Dist. No. School Dist. 4 D M

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2 (over)		
Corporation Stock		36787
Merchandise, Date of		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

The WITNESS: Yes, sir; 1902.

The figures shown in that statement, which is marked Exhibit "2" were the figures which were furnished to the assessor.

The amount of government bonds held by the bank on the 1st day of January, 1902, was $183,811.65. This represented an investment of that much of the capital of the bank at that time.

Cross-examination:

The capital stock of the bank at that time was $400,000; the surplus was $65,400 in round numbers. The bank had no shares of stock in any other corporation at that time.

(Witness excused.)

7. Plaintiff offered the printed record of the proceedings of the city council, covering the months of March and May, 1902, showing the election of William Brereton, a member of the council, as chairman *pro tem.* of the council.

Plaintiff offered in evidence so much of such printed record as showed the election of William Brereton as chairman of the board of review.

Plaintiff offered in evidence so much of such printed records as showed the approval by the city council as a board of review of the assessment made by the assessor against the Des Moines Savings Bank for the year 1902.

Plaintiff offered in evidence so much of the record of said council as showed the final adjournment of the board of review on April 29, 1902.

EXHIBIT "1."

Plaintiff offered in evidence Exhibit "1," which is as follows:

(Here follows Exhibit 1 marked p. 8.)

9 EXHIBIT "2."

Plaintiff offered in evidence Exhibit "2," which is as follows:

Statement of Des Moines Savings Bank.

January 1, 1902.

Total deposits	$4,201,386.80
Capital	400,000.00
Profit and loss	63,488.48
Profits	2,098.98
Dividends unpaid	372.00
	$4,667,346.26
Cash	$225,107.98
In banks	326,634.89
Loans	3,826,246.65
Over-drafts	7,679.48
Real estate	95,661.48
Revenue stamps	197.06
Government bonds	183,811.65
Coupon account	2,007.07
	$4,667,346.26

EXHIBIT "3."

Plaintiff offered in evidence Exhibit "3," which is as follows:

To the Honorable City Council of the City of Des Moines, as a Board of Review for the assessment of property in said city, and to William H. Brereton, chairman or presiding officer of such board:

10 You are hereby notified that the Des Moines Savings Bank of Des Moines, Iowa, has appealed to the district court of the state of Iowa in and for Polk county from the action of said city council as such board of review in assessing its corporation stock for taxation, and in over-ruling and denying the complaint made by said bank of the action of the assessor in assessing said stock.

Dated at Des Moines, Iowa, April 25, 1902.

DES MOINES SAVINGS BANK,
By BERRYHILL & HENRY,
Its Attorneys.

Service of the above notice is hereby accepted this 25th day of April, 1902.

W. H. BRERETON,
Chairman Board of Review.

Exhibit "4."

N. B.—All property must be listed at its actual cash value.
Taxes are Levied on 25 per cent of same.

Assessment Roll, 1902. No. 6573

Polk County, Iowa, Nov 9th 1902.

Address Des Moines Savings Bk Agt

Vest 5th + Walnut Twp. Dist. 2nd

Road Dist. No. School Dist. W. D. M.

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		4
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, Including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2 (over)		184.015.33
Corporation Stock		
Merchandise, Date of Inv.		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

Mr. HENRY: We will ask counsel for the city to admit, subject to their correction if they find they are wrong about it that the signature, "W. H. Brereton," as chairman of the board of review, which appears on that exhibit, is the genuine signature of W. H. Brereton.

Mr. COHEN: We will admit that is his signature as chairman of the board of review.

Assessor's Book.

Plaintiff offered in evidence from the book, marked "Assessor's Book, 1902, City of Des Moines, second district, Polk County," on double page 34, the following:

Assessment roll No. 6573. Name Des Moines Savings Bank. Address 5th and Walnut Streets.

Total value personal—

Actual value.	Taxable value.	Moneys and credits.
$367,827.00	$91,957.00	$367,827.00

Plaintiff offered from double page 174 of the tax lists of 1902 of the second district, Polk county, Iowa, personal, now being within the city of Des Moines, Iowa, the following:

11 Owner's name the Des Moines Savings Bank. Description 5th and Walnut streets.

Taxable value, personal
$91,960.00

EXHIBIT "4."

Plaintiff offered in evidence Exhibit "4," which is as follows:

(Here follows Exhibit 4 marked p. 12.)

13 Plaintiff later offered in evidence Exhibit "6," which is inserted here for convenience of comparison, being stub No. 6573 of the assessment roll for 1902 (from which Exhibit 4 was torn or separated) of the second district of the city of Des Moines, Polk count-, Iowa, and which is as follows:

EXHIBIT "6."

(Here follows Exhibit 6 marked p. 14.)

Exhibit "6."

N. B.—All property must be listed at its actual cash value.
Taxes are Levied on 25 per cent of same.

6573

Assessment Roll, 1902. No. [redacted]

Polk County, Iowa. Apr. 9th 1902.

Address Des Moines Savings Bk. Age

West 5th Walnut Twp., Dist. 2d

Road Dist. No. School Dist. W. D. M.

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		367 82
Moneys and Credits from Form No. 2 (over)		[illegible]
Corporation Stock		
Merchandise, Date of Inv.		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

15 The COURT: The number that appears there is the number that appears upon the assessor's book in the auditor's office?
Mr. HENRY: Yes, sir.

Admission.

It is admitted that Exhibit "4" is the notice signed by the assessor of Des Moines township, and that it was given to the Des Moines Savings Bank on or about the day that it bears date, viz.: April 9, 1902.

Plaintiff offered in evidence Sec. 20 on page 48 of the report of the code commission to the 26th General Assembly of Iowa, as follows:

SEC. 20 National state and savings banks, and loan and trust companies should be taxed on the same basis as private banks, except that the tax should be paid by the stockholders. At present national and state banks are taxed by means of taxation on the stock. (Code Sec. 818; McC. Sec. 1292 (&); 23 G. A., c. 39.) There seems to be no reason why savings banks should not be taxed in the same manner.

(Objected to as incompetent, irrelevant and immaterial.)

Plaintiff offered in evidence Sec. 20 on page 251 of the code of Iowa, as reported to the 26th General Assembly by the code commission, as follows:

SEC. 20. The shares of stock of any national state or savings bank, or loan and trust company doing business in the state, or other corporation which receives deposits or money in trust, shall be assessed to the owners thereof at the place where its principal business is transacted, the assessment to be on the real value of such shares of stock on the first day of January in each year. At the time the assessment is made, the officers of the corporation shall fur-
16 nish the assessor with a list of the stockholders, with the post-office address of and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total valuation of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all matters provided in the preceding section, which shall show, separately, the amount of capital stock and the surplus and undivided earnings, and the assessor, from such statement, and any other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. (1288, 1297-9, 1815, 23 G. A., c. 39.)

(Objected to as incompetent, irrelevant and immaterial.)

Thereupon the plaintiff rested.

Defendants' Evidence.

Defendants offered in evidence

EXHIBIT "5."

"Des Moines, Iowa, April 22, 1902. The Des Moines Savings Bank protests on the assessment of the shares of stock for the reason that the assessor has refused to allow deductions for the government bonds held by said bank.

(Signed) DES MOINES SAVINGS BANK,
Per SIMON CASADY, *Vice President.*"

Objected to as immaterial for any other purpose than for the purpose of showing that a protest was filed.

Admission.

It was admitted that Exhibit "5" was the only written protest filed by the Des Moines Savings Bank with the board of review
17 against the assessment in controversy in this case, and that said protest was filed on April 22, 1902, and that the signature thereto is in the handwriting of Mr. Casady. The protest being on the printed form in use at the city hall, and the written part of the body being in the handwriting of Mr. Casady.

The subject matter of such admission is objected to as incompetent, irrelevant and immaterial.

The COURT: Is this assessment in controversy the only assessment made against the Des Moines Savings Bank for the year in question?

COUNSEL FOR BOTH PARTIES: Yes, sir.

JACOB G. BECK, a witness on behalf of the defendant, testified as follows:

I was deputy assessor of the city of Des Moines for 4 years and during the year 1902.

Q. I hand you Exhibit "1," which is the assessment roll of the Des Moines Savings Bank, No. 5998, showing assessment of the corporation $367,827.00, and ask you if you made that assessment?

A. Yes, sir; I made the assessment.

Q. I will ask what the assessment was?

Objected to as incompetent, irrelevant and immaterial, and specifically because a notice cannot be varied by any statement of the witness of his conclusion or opinion.

A. It is the value of the shares of stock as near as I could come to it from the statement furnished the assessor's office by the bank.

The COURT: That notice says "corporation stock."

The WITNESS: This is the notice furnished the assessor by the county auditor.

18 Answer of the witness objected to and motion to strike out because it contradicts the notice itself and is incompetent.

I made assessments prior to the one in question.

Q. What was the custom of the assessor in making such assessments, particularly in reference to this bank, how was the assessment made in previous years? How was the assessment shown on the assessment roll?

(Objected to as incompetent, irrelevant and immaterial.)

A. They were made under the form of moneys and credits. And the first assessment made this year was made under the form of moneys and credits.

Cross-examination:

Q. You found in your experience as a deputy assessor that there were some banks that owned stock in other corporations, didn't you?

A. Yes, sir.

Q. Were you accustomed to designate that as corporation stock?

A. No, sir.

Q. How would you designate it?

A. We didn't designate it at all. They simply always asked to have it deducted and we refused to recognize the fact at all.

I got at the figures which appear on Exhibit "1" opposite the words "corporation stock" $367,827.00 in this way: We took from Exhibit "2" their capital stock $400,000.00, their profits $63,488.48, and added this together, we then deducted from that total the value of their real estate $95,661.48, and this left $367,827.00.

Q. Is that exactly the way in which the aggregate of moneys and credits in Exhibit "4" was arrived at, except that Exhibit "2"
19 shows an addition to that $184,015.35 of moneys and credits in Exhibit "4," the amount of government bonds?

A. Yes, sir.

Q. In other words, just add them together?

A. I didn't make that assessment. The government bonds is $183,118.65.

Q. That was doing what you now say was assessing the shares of stock you simply add to the total of moneys and credits as given in the previous assessment, the amount of government bonds that were held by the bank on the 1st of January?

A. I did not.

Q. What did you do?

A. I just told you what I done. I took the capital and undivided profits, deducted the real estate, and concluded that their shares were worth that much money, that they had that much money there.

Q. I am not asking you what you concluded, but what you did?

A. I did that.

Q. And $184,015.35, moneys and credits in Exhibit "4" was obtained by taking the capital and the profits and deducting therefrom the real estate and the government bonds?

A. I couldn't tell you.

Q. You can tell by adding it up yourself?

A. I can tell you whether it was done, but I didn't make that assessment, and I don't know what he done.

Q. Assuming that the total as shown in that notice of assessment was $184,015.35, did you not in making the second notice, simply add to that amount the amount of government bonds?

20 A. I couldn't say that I did.

Q. I will ask you why you would do any more than that because, when you consider the result is arrived at by adding those two figures together.

(Objected to as not proper cross examination.)

A. In other cases it might not be that way. I explain how I made that assessment, and in some cases it might not be that way.

Q. Why might it not have been that way in this case?

A. It might have been that way and it might not.

Q. You are not prepared to say it was not arrived at in that way?

A. Yes, sir; I have stated that.

Q. Why?

A. Simply because I found out from this statement as near as I could what I considered the value of their shares of stock. Then the law says, deduct their real estate, which I done, and made the assessment on that basis.

Q. Do you know how many shares there were?

A. I do not. I think there were about three thousand.

Q. You did not then arrive at the value per share of these shares of stock, did you?

(Objected to as incompetent, irrelevant and immaterial.)

A. I arrived at the aggregate value of the shares of stock because I did not have any other data to go by.

Q. And you arrived at it exactly the way you would arrive at the aggregate of moneys and credits, except in one case you would include the government bonds and in the other you did not?

A. I didn't take any government bonds into consideration in that statement at all. If they owned government bonds their stock would be actually worth what government bonds they had anyhow. That's what I considered.

21 Q. You did not then have any statement or ask for any statement as to the number of shares of stock that there were, did you?

(Objected to as incompetent, irrelevant and immaterial, and not proper cross examination.)

A. If I remember right the other statement showed that they had three thousand.

Defendant rested.

Plaintiff's Evidence in Rebuttal.

P-aintiff offered in evidence Exhibit "6," which appears in a prior *positioi* of this abstract.

It is agreed by the parties that no other stub was made out at the

time of giving the second assessment notice heretofore marked Exhibit "1."

Mr. BREMNER: The defendant admits this, but objects to the testimony as irrelevant, incompetent and immaterial. The appeal here is from the action of the board of review, and that has nothing to do with anything the assessor's office did.

Admission.

Mr. BREMNER: The defendant admits that the tax for the year 1902 growing out of the assessment in controversy has been paid by the Des Moines Savings Bank, and that the same was paid under protest, but the defendant objects to the fact itself as incompetent, irrelevant and immaterial.

Thereafter, and on the 23d day of November, 1903, the court entered in this cause the following

Decree.

Now, on this 23d day of November, 1903, being the September term of this court, this cause came on for hearing in regular order,
22 the plaintiff appearing by its attorneys, Berryhill & Henry, and the defendant by W. H. Bremner, city solicitor, after hearing the evidence and arguments of the attorneys, and being fully advised in the premises, the court finds the equities are with the defendant.

Therefore, be it ordered, adjudged and decreed that this appeal be and is hereby dismissed, and the costs of this action taxed to the plaintiff.

JAMES A. HOWE, *Judge.*

Thereafter the transcript of the testimony in the said cause was duly certified and filed in the office of the clerk of the court below. The said transcript was certified by the judge, who was presiding judge upon the trial of the said cause in the court below, and the certificate was in such form as to fully preserve and make a matter of record all of the testimony either introduced or offered on the trial of the said cause, and all proceedings had upon the trial, and all motions and objections and exceptions taken by the parties, and all rulings on the same, and all of the said matters were duly made a matter of record in the said cause.

That thereafter, and on the 12th day of February, A. D. 1904, the said evidence, including all of the evidence introduced or offered on the trial of the said cause, together with the said certificate, was filed in the office of the clerk of the said district court.

Appeal.

That thereafter, and on the 12th day of February, A. D. 1904, the said Des Moines Savings Bank duly perfected its appeal to the supreme court of Iowa from the judgment and decree of the court

below, and from all of the rulings in the court below in this
23 cause adverse to the appellant; that said appeal was duly perfected in all respects as required by law and the rules of the said supreme court and that due and legal notice of the said appeal was given and filed in the office of the clerk of the court below and that the clerk of the court below was secured his fees for a transcript.

The foregoing is a complete abstract of all of the proceedings, pleadings, evidence, motions, rulings, objections and exceptions filed or taken in the above entitled cause; and contains all of the evidence offered or introduced on the trial thereof, together with the decree of the court rendered therein, as well as the pleadings and the notice of appeal.

BERRYHILL & HENRY,
Attorneys for Appellant.

The actual cost of printing the foregoing abstract is the sum of $31.00.

BERRYHILL & HENRY,
Attorneys for Appellant.

24 I.

Assignment of Errors.

The assessor having made one assessment, of which notice was given the bank, dated April 9, 1902, the second assessment (so called) made by the deputy assessor of which notice was given the bank, dated April 22, 1902, was of no force and effect and the approval thereof by the board of review and the city council was of no effect and created no valid assessment against the bank in the absence of any fraud or concealment on the part of the bank in connection with its statement to the assessor on which his first assessment was based.

II.

There was no notice to the appellant bank or its stockholders of any assessment upon the value of its shares of stock, the only notice of any assessment being, first, a notice of an assessment upon "moneys and credits" and secondly, a notice of an assessment upon "corporation stock," whereas the law permits no other assessment in the case of a savings bank, than an assessment upon the value of its shares of stock and of its real estate.

III.

The only assessment against the appellant bank for the year in question, aside from its real estate, as shown by the "assessment roll," was an assessment of "moneys and credits," whereas the law permits no other assessment in the case of a savings bank, aside from its real estate, than an assessment upon the value of its shares of stock.

IV.

The assessment appealed from includes the bonds of the United States of America to the value of one hundred and eighty-three thousand, eight hundred eleven dollars and sixty-five cents
25 ($183,811.65) which were owned by the Des Moines Savings Bank on the first day of January, 1902, and constituted a part of the property in which its capital stock was invested, which bonds were not subject to assesment and taxation by the state of Iowa, or any of its subdivisions, and for this reason the said sum of one hundred and eighty-three thousand, eight hundred eleven dollars and sixty-five cents ($183,811.65) should be deducted from the amount of the said assessment.

V.

If, or in so far as the statutes of the state of Iowa relative to the taxation of this appellant, authorize the assessment of the bonds of the United States of America, owned by the said Des Moines Savings Bank, for taxation, and the levy of a tax upon the same, the said laws are void because in contravention of the statutes of the United States and of the provision in Section 8 of Article I of the constitution of the United States, to the effect:

'That the congress shall have power * * * to borrow money on the credit of the United States" and said Des Moines Savings Bank expressly claims the benefits and immunities of the said provision of the constitution of the United States.

VI.

If, or in so far as, Section 1322 of the code of Iowa authorizes the assessment to the Des Moines Savings Bank of the shares of the capital stock of the said bank which are the property of its shareholders, and if, and in so far as, the said section and the laws of Iowa authorize the levy of a tax against the said Des Moines Savings Bank on account of the value of the said shares, and based on said assessment, the said statutes authorize the collection from the said Des
26 Moines Savings Bank of a tax levied, not upon its property, but upon the property of others, and this constitutes a taking of the property of the said Des Moines Savings Bank without due process of law, in contravention of the provisions of Section 1 of Article XIV of the constitution of the United States, which section is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And the said Des Moines Savings Bank expressly sets up and claims the benefits and immunities of the said provision of the constitution of the United States.

VII.

Section 1322 of the statutes of the state of Iowa in fact requires the assessment and taxation of the property of the corporation, the Des Moines Savings Bank, and under the said section the said Des Moines Savings Bank is entitled to have deducted from the assessed value of the property in which its capital stock is invested, the amount of its government bonds; and if, and in so far as, the said section does not authorize the deduction of the value of the said bonds of the United States of America, the same is in contravention of each of the provisions of the constitution of the United States hereinbefore referred to, which are set up by the said bank and the immunities and benefits of which are expressly claimed by the said bank.

27 Supreme Court of Iowa.

Filed Dec. 17, 1904.

PEOPLES SAVINGS BANK, Appellant,
vs.
THE CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

THE DES MOINES SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

THE HOME SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

Appeal from the judgment of the district court affirming the action of the board of review of the City of Des Moines in refusing to deduct from the assessment of the appellant banks upon its shares of stock the amount of government bonds owned by them.

N. T. Guernsey, for Peoples Savings Bank.
Berryhill and Henry, for Des Moines Savings Bank.
Dale & Harvison, for Home Savings Bank.
W. H. Bremner, M. H. Cohen & R. B. Alberson, for Appellees.

28 *Per Curiam.*—This court is fully committed to the doctrine that the general exemption from state taxation with which the bonds of the United States are clothed, does not entitled the bank to deduct the amount of such bonds from the value of the shares of their stock which are assessed to it for the purpose of taxation under Code section 1322.

German Savings Bank *vs.* Burlington 118 Iowa 84.
National State Bank *vs.* Burlington 119 Iowa 696.
1st National Bank *vs.* Independence 122 Iowa 482.

We are favored by an elaborate and able argument for appellants insisting that such taxation cannot be upheld expecially as applying to savings banks, and that this position has the support of the federal supreme court whose holding in the last resort must govern the rights of the parties. These propositions were presented quite fully in the cases above cited and we are still satisfied with the conclusions their reached. Those cases have all been decided within such recent period that a rediscussion of the subject and of the bearings of the various precedents cited is not called for.

The judgment of the district court is affirmed.

29 Supreme Court of Iowa.

STATE OF IOWA, *ss:*

Be it remembered, that on the 17th day of December A. D. 1904, the following proceedings, among others, were had and entered of Record in the Supreme Court of Iowa, to wit:

Appeal from Polk District Court.

No. 23593.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

I- this cause the Court, being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal taxed at $5.75 and that execution issue therefor.

30 In the Supreme Court of the United States.

DES MOINES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Petition for Writ of Error to the Supreme Court of Iowa.

To Chief Justice of the Supreme Court of Iowa:

Your petitioner, the Des Moines Savings Bank, now comes and respectfully states:

That it is and was at all the times hereinafter mentioned, a corporation duly created, organized and existing under and by virtue of the laws of the State of Iowa, for the transaction of a banking busi-

ness; and that its principal place of business is, and was at all of the times hereinafter mentioned, at the City of Des Moines in the said state.

That on or about the 9th day of April A. D., 1902, the duly elected and qualified assessor of the said city of Des Moines, who was at that time the proper person under the laws of the State of Iowa, to assess for taxation the property of the plaintiff in error, did assess for taxation the property of the plaintiff in error in the sum of $184,015.35, and that thereafter, and on or about the 22d day of April, 1902, the said assessor increased said assessment of the property of the plaintiff in error by the sum of $183,811.65, and made the assessment upon the said property of the plaintiff in error the sum of $367,827.00, instead of the sum of $184,015.35.

That the said increase of $183,811.65 in the assessment of
31 the property of the plaintiff in error was an assessment, for the purposes of taxation under the laws of the State of Iowa, of bonds of the United States of America owned by the plaintiff in error, said bonds being bonds issued by the said United States of America pursuant to the war revenue act of Congress approved June 13, 1898, (30 Statutes at large, page 488) known as coupon 3's.

That of the capital stock of the plaintiff in error there was actually invested in the said bonds, upon the date as of which under the laws of the State of Iowa, the assessments for taxation for the year A. D. 1902 were made, the sum of $183,811.65, and that the said increase in the said assessment was an assessment for the purpose of taxation of the said bonds of the United States of America, so owned by the plaintiff in error.

That after the said assessment had been so increased the plaintiff in error, in accordance with the laws of the State of Iowa in such cases made and provided, appealed to the city council of the said City of Des Moines, sitting as a board of review, or of equalization, and thereafter, and on or about the 29th day of April, 1902, the said city council, so sitting, refused to annul said increase of assessment and overruled the objections and appeal of the plaintiff in error, and confirmed and approved the said assessment in the said sum of $367,827.00.

That thereafter, in accordance with the laws of the State of Iowa, in such cases made and provided, the plaintff in error appealed from the final decision of said city council, so sitting as a board of review, or of equalization, to the district court of the State of Iowa, in and for Polk County, where said cause was tried to the court on its merits as an equity cause, without special assignments of error; and such proceedings were had therein as that, on or about the 23d day of November A. D. 1903, the said district court entered of record its
final decree in the said cause dismissing the appeal of this
32 plaintiff in error from the said assessment and confirming the same, and rendering judgment against this plaintiff in error for the costs of the said appeal; to all of which this plaintiff in error then and there at the time duly excepted. That thereafter in accordance with the laws of the State of Iowa, in such cases made and provided, this plaintiff in error appealed from said final decree of the said district court in the said matter, to the supreme court of

Iowa, the said supreme court being the highest court at law or in equity in the said state of Iowa, in which a decision could be had in said cause.

That said cause was triable *de novo* in the said supreme court of Iowa, without assignments of error, and was submitted to the said supreme court of Iowa upon what, under the rules of the said court, is known as a printed abstract of the record of said cause, which abstract contained all pleadings and papers filed therein, all evidence offered upon the trial thereof, and all rulings and orders made upon said trial in the said district court, and all proceedings had or done upon the said trial, together with the final judgment and decree rendered and entered of record in the said cause in said district court, and the taking of the appeal therefrom.

That thereafter such proceedings were had in the said cause in the said supreme court as that, after having been duly argued by counsel for both the plaintiff and defendant in error, the same was finally submitted to the said supreme court of Iowa, on the 22d day of November A. D. 1904, and thereafter and on or about the 17th day of December A. D. 1904, the said supreme court of Iowa, fined in said cause, its opinion affirming the judgment and decree of the said district court (which opinion is reported at Volume 101, Northwestern Reporter, page 867); and in pursuance of said opinion, on the 17th day of December A. D. 1904, a final judgment and decree was rendered and entered of record in the said cause by the said supreme court of Iowa, in favor of the parties hereinbefore
33 named as defendants in error, and against this plaintiff in error, affirming the said judgment and decree of the said district court and rendering judgment against this plaintiff in error for the costs upon said appeal.

That the questions submitted to the said supreme court of Iowa for decision and decided against this plaintiff in error by that court in this cause were:

First: Do the statutes of the State of Iowa in such cases made and provided, and especially section 1322 of the Code of 1897 of Iowa, require the assessment for purposes of taxation of bonds of the United States of America, constituting a part of the assets of the plaintiff in error in which its capital is invested, and are these statutes therefore void because in contravention of Section 8, Article I., of the Constitution of the United States and of the statutes of the United States?

Second: Was the assessment in controversy void because it was an assessment for taxation upon bonds of the United States of America, owned by the plaintiff in error, in contravention of the provisions of Section 8, Article I., of the Constitution of the United States, and of the statutes of the United States?

Third: Do the statutes of the State of Iowa in such cases made and provided, and especially section 1322 of the Code of 1897 of Iowa, require the assessment to the plaintiff in error, for the purposes of taxation, of the shares of its stock owned by its shareholders, and the exaction from it of the taxes on said assessments, without provision for the reimbursement of the plaintiff in error, and are these statutes therefore void, because in contravention of the provisions of

Section 1, Article XIV. of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law, and that no state shall deny to any person the equal protection of the laws?

34 *Fourth:* If it be considered an assessment upon the shares of its stock owned by the shareholders of the plaintiff in error, was the assessment in question, and are the taxes levied thereon void because to assess to the plaintiff in error for the purposes of taxation the property of others and to exact from it taxes levied upon such assessments, without any provision for the reimbursement of the plaintiff in error on account of such taxes, would be to take the property of the plaintiff in error without due process of law and to deny to it the equal protection of the laws in contravention of Section 1, Article XIV., of the Amendments to the Constitution of the United States?

That the final judgment and decree so rendered by the supreme court of Iowa is unwarranted in law, as plaintiff in error is advised.

Plaintiff in error presents herewith a bond in proper form and an assignment of errors, and prays that a writ of error may be allowed so as to have a review in the supreme court of the United States of said decision, and judgment and decree of said supreme court of Iowa, and that a citation issue in due form and course to require each of the defendants above named to appear to said writ of error and show cause why such judgment of the said supreme court should not be corrected as provided by law, and the rules of this court.

DES MOINES SAVINGS BANK,
Plaintiff in Error,
By GEO. F. HENRY, *Its Attorney.*

——— ———,
Attorney for Plaintiff in Error.

STATE OF IOWA, *Polk County, ss:*

I, Geo. F. Henry, being duly sworn on oath, depose and say that I was the attorney for the plaintiff in error, the Des Moines Savings Bank, throughout all of the proceedings above referred to,

35 from the proceedings before the Board of Review to and including the final proceedings before the supreme court of the State of Iowa; that I have personal knowledge of the contents of the foregoing application for a writ of error, and that the matters and things set forth are true as I verily believe.

GEO. F. HENRY.

Subscribed and sworn to before me by the said Geo. F. Henry on this 12 day of July A. D. 1905.

[Seal of the Supreme Court of Iowa.]

H. L. BOUSQUET,
Deputy Clerk, Supreme Court of Iowa.

Writ of error allowed this 12th day of July A. D. 1905.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

36 [Endorsed:] In the Supreme Court of the United States. Des Moines Savings Bank *vs.* City of Des Moines and the City Council of said City as a board of review. Petition for Writ of Error. Filed Jul- 14, 1905. Jno. C. Crockett, Clerk, Supreme Court.

37 In the Supreme Court of the United States.

DES MOINES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Assignment of Errors.

Comes now the plaintiff in error, the Des Moines Savings Bank, and avers that the judgment and decree rendered by the supreme court of Iowa against the plaintiff in error in the above entitled cause on the 17th day of December A. D. 1904, is erroneous, and against the rights of the plaintiff in error; and as and for its assignment of errors upon which it relies for a review and reversal of said judgment and decree, plaintiff in error respectfully shows to the court that there is manifest error upon the face of the record, and in said judgment and decree of the supreme court of Iowa, and the record and proceedings in said cause in the following respects, to-wit:

First: That the supreme court of Iowa erred in rendering its judgment and decree affirming the assessment for taxation made against the plaintiff in error, in controversy in this cause, and affirming the said judgment and decree of the district court of the State of Iowa, in and for Polk County.

Second: That the supreme court of the State of Iowa erred in holding that the assessment complained of was not an assessment for taxation levied upon bonds of the United States which were the property of the plaintiff in error.

Third: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 8,
38 Article I. of the Constitution of the United States.

Fourth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 3701 of the Revised Statutes of the United States.

Fifth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act

to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

Sixth: That the supreme court of Iowa erred in holding that the property of the shareholders of the plaintiff in error should be assessed and taxed to the plaintiff in error, without provision for its reimbursement for taxes so paid, by the owners of the property taxes, because,

(*a*) To so hold is a denial to the plaintiff in error of the equal protection of the laws, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

(*b*) To subject the plaintiff in error to such taxation constitutes a taking of the property of the plaintiff in error without due process of law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of his property without due process of law.

Seventh: That the supreme court of Iowa erred in holding that the assessment in question could properly be made under section 1322 of the Code of 1897, of Iowa, because:

(*a*) If the said section authorizes the assessment of bonds of the United States for purposes of taxation, the same is void because in contravention of section 8, Article I., of the Constitution of the United States.

39

(*b*) If said section authorizes the assessment, for purposes of taxation, of bonds of the United States, the same is void because in contravention of section 3701 of the Revised Statutes of the United States.

(*c*) If said section authorizes the assessment for taxation of said bonds of the United States, the same is void because in contravention of the express provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

(*d*) If the said section authorizes the assessment for taxation of the bonds of the United States which were sought to be assessed, the same is void because in contravention of the provision of section 1, Article XIV., of the Amendments to the Constitution of the United States that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States because under both the laws and Constitution of the United States plaintiff in error was entitled to hold the bonds in question exempt from taxation by the State of Iowa.

(*e*) If the said section authorizes the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of its shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of the provisions of Article XIV. of the Amendments to the Constitution of the United States which provides "nor shall any state deprive any person of life, lib-

erty or property without due process of law," there being no provision in the laws of the State of Iowa for the reimbursement of the plaintiff in error for taxes so exacted from it.

(*f*) If the said section authorizes the assessment against
40 the plaintiff in error for purposes of taxation of the shares of its stock which are the property of the shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of section 1 of Article XIV. of the Amendments to the Constitution of the United States which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The laws of Iowa provide that all property shall be taxed to the owners thereof, and where corporations other than savings banks are made primarily liable for taxes imposed upon their shares of stock, provide for their reimbursement, but these laws make no provision for the reimbursement of savings banks on account of taxes levied against the shares of their stock and exacted from the banks.

Eighth: That the Supreme Court of Iowa erred in holding that the plaintiff in error is subject to taxation, without reimbursement, upon shares of stock not owned by it, because

(*a*) Such taxation amounts to a taking of the property of the plaintiff in error without due process of law, in contravention of the provision of Section 1, Article XIV. of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law.

(*b*) Such taxation amounts to denial to the plaintiff in error of the equal protection of the laws, in contravention of the provision of section 1, of Article XIV. of the Amendments to the Constitution of the United States, that no state shall deny to any person within its jurisdiction the equal protection of the laws.

Wherefore, Plaintiff in error prays that said order and final judgment of said supreme court of Iowa be reversed with costs of suit.

Dated this 12 day of July A. D. 1905.

DES MOINES SAVINGS BANK,
Plaintiff in Error,
By GEO. F. HENRY, *Its Attorney.*

GEO. F. HENRY,
Attorney for Plaintiff in Error.

41 [Endorsed:] In the Supreme Court of the United States. Des Moines Savings Bank *vs.* City of Des Moines and the City Council of said City as a board of review. Assignment of Errors. Filed Jul- 14 1905 Jno. C. Crockett, Clerk Supreme Court.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before

you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Des Moines Savings Bank, appellant, and the City of Des Moines and the City Council of said City as a board of review, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Des Moines Savings Bank as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the
43 United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of July, in the year of our Lord one thousand nine hundred and five.

[Seal U. S. Circuit Court, Southern District, Iowa.]

EDWARD R. MASON,
Clerk of the Circuit Court of the United States for the Southern District of Iowa,
By MAZE VERNON, *Deputy.*

Allowed by
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

Fee for writ $1.00 paid.

E. R. MASON, *Clerk,*
By MAZE VERNON, *D'p'ty.*

44 [Endorsed:] Writ of Error. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

45 UNITED STATES OF AMERICA, *ss:*

To the City of Des Moines and the City Council of said City as a board of review, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Iowa wherein the Des Moines Savings Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable John C. Sherwin, Chief Justice of the Supreme Court of Iowa this 12th day of July, in the year of our Lord one thousand nine hundred and five.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

On this 14th day of July, in the year of our Lord one thousand nine hundred and five, personally appeared Henry H. Griffiths before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Geo. W. Mattern, Mayor of the City of Des Moines, and to N. B. Vertrees, City Clerk of the City of Des Moines, & to Wm. H. Bremmer, attorney for the defendants in error in the court below.

HENRY H. GRIFFITHS.

Sworn to and subscribed the 14th day of July, A. D. 1905.

[Notarial Seal Geo. F. Henry, Iowa.]

GEO. F. HENRY,
Notary Public, Polk Co., Ia.

46 [Endorsed:] Citation. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

Service of the within citation is hereby accepted July 14, 1905.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
City Attorneys for City of Des Moines & Attorney for City of Des Moines & the City Council of said City as a Board of Review.

47 Know all men by these presents, That we, Des Moines Savings Bank, as principal, and C. T. Cole, Jr., and Simon Casady, as sureties, are held and firmly bound unto City of Des Moines and the City Council of said City as a board of review in the full and just sum of Five Hundred (500) dollars, to be paid to the said City of Des Moines and the City Council of said City as a

board of review — certain attorney, executor-, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 12th day of July, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the Supreme Court of Iowa in a suit depending in said Court between Des Moines Savings Bank, Plaintiff and the City of Des Moines and the City Council of said City as a board of review, Defendants, a judgment was rendered against the said Des Moines Savings Bank and the said Des Moines Savings Bank having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said City of Des Moines
48 and City Council of said City as a board of review citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Des Moines Savings Bank shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal Des Moines Savings Bank, Des Moines, Iowa.]

DES MOINES SAVINGS BANK,
By P. M. CASADY, *Pres't.* [SEAL.]
SIMON CASADY. [SEAL.]
C. T. COLE, JR. [SEAL.]

Sealed and delivered in the presence of—
WM. W. MAISH.
R. L. CHASE, JR.
C. H. STEPHENSON.

Approved by—
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

49 [Endorsed:] Bond. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

50 STATE OF IOWA, *ss:*

I, Jno. C. Crockett, Clerk of the Supreme Court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record, opinion, and final judgment in the case of Des Moines Savings Bank, Plaintiff in Error *vs.* City of Des Moines, and the City Council of said city as a Board of Review, Defendant in Error, as full, true and complete as the same are of record and on file in my office.

I further certify that the Petition for the Writ of Error, the Assignment of Error, the Writ of Error, citation and supersedeas Bond,

with the Order of Approval to operate as a Supersedeas endorsed thereon, are hereto attached in original form, and that true and correct copies thereof have been retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and the seal of said Court at Des Moines, Iowa, this 14th day of July 1905.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court of Iowa.

Endorsed on cover: File No. 19,864. Iowa Supreme Court. Term No. 92. Des Moines Savings Bank, plaintiff in error, *vs.* The City of Des Moines and The City Council of said city as a Board of Review. Filed July 29th, 1905. File No. 19,864.

FILE COPY.

Office Supreme Court, U. S.
FILED.
FEB 2 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

HOME SAVINGS BANK, *Plaintiff in Error*,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW. } No. 82.

PEOPLE'S SAVINGS BANK, *Plaintiff in Error*,
vs.
SAME. } No. 83.

DES MOINES SAVINGS BANK, *Plaintiff in Error*,
vs.
SAME. } No. 92.

MOTION TO FIX EARLY DAY FOR FURTHER ARGUMENT OF ABOVE CAUSES.

Now come the parties to the above entitled causes respectively, and referring to the order of this honorable court of December 3d, 1906, restoring each of said causes to the docket for further argument, move the court to assign said causes for such further argument on the earliest day compatible with the convenience of the court.

W. G. HARVISON,
Attorney for Plaintiff in Error in No. 82.
N. T. GUERNSEY,
Attorney for Plaintiff in Error in No. 83.
GEO. F. HENRY,
Attorney for Plaintiff in Error in No. 92.
W. H. BREMNER,
M. H. COHEN,
Attorneys for Defendants in Error in Each Case.

FILE COPY.

No. 82.

Office Supreme Court U.
FILED
OCT 16 1906

BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1906.

HOME SAVINGS BANK, PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES, AND THE CITY COUNCIL OF SAID CITY, AS A BOARD OF REVIEW; DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF IOWA

HORATIO F. DALE AND WM. G. HARVISON,
Attorneys for Plaintiff in Error.

Due and legal service hereof is hereby accepted and acknowledged at Des Moines, Iowa, this _____ day of _____ 1906.

_____

_____

_____

Attorneys for Defendants in Error.

Synopsis of Brief of Plaintiff in Error.

		Pages.
Div. 1:	Statement of the case	1-3
Div. 2:	Specification of Errors relied on	4-5
Div. 3:	Contravention of the prohibition of a State to tax Federal Securities	5-25
Div. 4:	No Congressional legislation exists authorizing taxation of U. S. Bonds through the shares of stock of a State Corporation	25-44
Div. 5:	Contravention of the XIVth Amendment to the U. S. Constitution, concerning due process of law and equal protection of the laws	44-72

NOTE: There are two other causes pending in this court, each in error to the Supreme Court of Iowa, entitled *Des Moines Savings Bank vs. City of Des Moines, and People's Savings Bank vs. City of Des Moines*, respectively, wherein some of the questions made in the instant case are involved. These three cases were tried together in the District Court, and in the Supreme Court, of Iowa. We respectfully suggest the expediency of submitting and considering them together in this court.

DIVISION 1.

Statement of the Case.

Early in the year, 1902, the Home Savings Bank, plaintiff in error, by its cashier, A. C. Miller, made a sworn statement, in writing, and delivered the same to the proper assessor of the City of Des Moines, as a basis for the taxation of the *moneys and credits* of said Bank. Said statement, Exhibit "1", showed $65,595.00 including the surplus of $10.000, of its moneys and credits, liable to taxation, but subject to deductions claimed by said Bank in the several sums of $3,854.00 for real estate owned by the Bank (separately assessed), and of $32,675.00 of United States Government Bonds held by the Bank, and claimed to be exempt from State taxation; leaving subject to taxation, the sum of $29,066.00. (Trans. 15—*A. C. Miller*, Trans. 19—*J. J. Beck*).

About April 9th, 1902, said Bank received from said assessor the first assessment notice No. 6572, (Ex. 2), dated on said date, showing the assessment of *moneys and credits* belonging to said bank in the sum of $39,486.33, (Trans. 15-*A. C. Miller;* Trans. 16). It was conceded of record that this amount is erroneous, and should have been only $29,486.00, (Trans. 16-*Mr. Bremner, Atty*).

A little later, said bank received from said assessor, a second assessment notice, No. 5996, (Ex. 3), showing an assessment of said Bank on *corporate stock* in the sum of $61,739.00. The only corporation stock then held by said Bank was the sum of $250.00 of stock of the Valley National Bank, (Trans. 15—*A. C. Miller*).

The assessor's book shows that said Bank was assessed, under the first assessment Roll, No. 6572, under the heading of "*Moneys and Credits,*" in the sum of $58,783, the taxable valuation thereof being 25 per cent, thereof, to-wit: the sum of $14,696.00, (Trans. 16—*Assessor's Book*).

Under the Code of Iowa, adopted in 1897, as amended, the taxable valuation of property in said State is 25 per cent of its assessed actual valuation. (Code Sec. 1305; Code Supp. of 1902-1305, including the amendment made by Chap. 30 of the Acts of the 27th. General Assembly of Iowa.)

The claim, made by defendants in error, is that this assessment was made against the Savings Bank, plaintiff in error, upon the *actual value of the shares of stock* of said Savings Bank, in the hands of its shareholders, under and by virtue of the provisions of the Code of Iowa of 1897, Section No. 1322, and that said Savings Bank is *primarily liable* for the payment of said tax, under the general law of the State.

On April 24, 1902, said Bank, duly filed its protest, (Ex. 4) with the Board of Review of the City of Des Moines, being one of the defendants in error. (Trans. 16). It is agreed that said Ex. "4" is identical with Ex. "A," attached to the petition of plaintiff in error. (Trans. 16—*Ex. "A"*; Trans. 13-14).

The Board of Review overruled said protest, and sustained the assessment made by the assessor. (Trans. 16). The board of Review adjourned *sine die* on April 29, 1902. (Trans. 17).

From this action of the Board of Review, plaintiff in error duly appealed to the District Court of the State of Iowa, in and for Polk County. It is conceded, of record, that notice of said appeal was duly served on the proper parties, within the time allowed by law for that purpose. (Trans. 16-17 *Bremner, Attorney*).

On the appeal, plaintiff in error, as plaintiff, on May 2nd, 1902, filed, in said District Court and case, its petition in equity, (Trans. 12-13-14), and on October 20, 1903, said plaintiff filed an amendment to its said petition. (Trans. 14). Thereafter, said cause was tried *de novo,* on the merits, without assignments of error, as an equitable action, and all evidence offered was duly preserved and made of record, (Trans. 15), and is contained in the record before this court. (Trans. 15-19). After argument of counsel, said cause was duly submitted to the court. (Trans. 19). On November 23rd, 1903, final judgment and decree was rendered and entered of record, by said District Court, in said cause, dismissing plaintiff's Petition, and and taxing the costs of the case to plaintiff. (Trans. 19). By statute of Iowa, such appeals to the District Court are triable *de novo*, in equity, without assignments of error (Code of Iowa of 1897-Sec. 1373).

From the foregoing decree, plaintiff in error herein, appealed to the Supreme Court of Iowa, by which court, said cause was again tried *de novo*, in equity, on the merits, without assignments of error. The entire record upon which said cause was heard and determined by the Supreme Court of Iowa, is contained in the transcript (Trans. 11-21).

Assignments of error were abolished in the State of Iowa by Chap. 126 of the Acts of the 30th General Assembly of Iowa. All equity cases, tried below, on the merits, are triable *de novo*, in the Supreme Court of Iowa, (Code of Iowa of 1897—Sec. 3652).

The matters submitted for consideration, in the state Courts, were:

First: The assessment made was, in fact and in legal effect, an assessment upon the *Capital stock* of plaintiff in error, and upon the $32,675.00 of United States bonds, in which the capital of

said Savings Bank was, to that extent, invested; and that such assessment, and Section 1322 of the Code of Iowa of 1897, under which said assessment for taxation was made and sustained, contravene Article 1, Section 8, Clauses 1 and 2, of the Constitution of the United States, conferring upon the United States the power to borrow money, etc.

Second: Said assessment for taxation, and said Code of Iowa of 1897, Section 1322, under which said assessment for taxation was made and sustained, contravene the statutes of the United States. (U. S. Rev. S., Sec. 3701, and the War Revenue Act of 1898, 30 St. L. Chap. 448-Sec. 33; 2 Supp. Rev. St. Pages 779 to 804, exempting from taxation the bonds issued by the United States).

Third: Said Sec. 1322, considered in its relation to other Sections of said Code, contravenes Article XIV of the Amendments to the Constitution of the United States, concerning due process of law and equal protection of the laws, by assessing and taxing to the bank, and making the Bank primarily liable for taxes assessed upon the shares of corporate stock therein, the property of individual stockholders, and not the property of the bank, without giving to the bank the right of full recoupment for such taxes paid by the Bank, and without regard to the dividends or other property, if any, belonging to each stockholder, held by or under the control of the bank; and by casting upon said bank, without possibility of recoupment, the burden and expense of the litigation necessary to collect, by separate suits, from each individual shareholder, the taxes on the shares paid by the Bank.

Said appeal was duly submitted to the Supreme Court of Iowa on November 22nd, 1904, and on December 17th, 1904, that court handed down its opinion deciding said cause against appellant, the plaintiff in error herein. (Trans. 21-22).

On the same day, final judgment was rendered and entered of record in said Court, affirming the judgment and decree below, ordering that a writ of *procedendo* issue accordingly, and adjudging that plaintiff pay the taxed costs of the appeal, and that execution issue therefor. (Trans. 37). To review this judgment, the Writ of Error has been sued out in this case.

The questions involved in this Writ of Error are summarized in the paragraphs respectively numbered First, Second and Third, set out *supra*, and are set out more in detail, in the succeeding Division of this brief.

Division 2.

Specification of Errors.

Plaintiff in error, as and for its specification of errors upon which it relies, respectfully states, as follows:

First: In fact, and in legal effect, the assessment for taxation complained of by the Home Savings Bank, plaintiff in error, was an assessment *upon the capital or capital stock* of plaintiff in error, including $32,675.00 thereof invested in Bonds of the United States, without exempting or deducting from said assessment, said U. S. Bonds, which assessment for taxation was made and sustained under the provisions of Section 1322 of the Code of Iowa of 1897. Said assessment, and said statute, (in so far as it is held to sustain said assessment), are each in violation of the Constitutional power of the United States to borrow money, etc., and in violation of the statutes of the United States, and in violation of the decisions of this court, concerning the exemption of such bonds from taxation by the State.

Second: Congress alone has legislative power or jurisdiction to authorize or permit taxation, by any State, directly or indirectly, of the bonds or other securities issued by the United States, or of the beneficial ownership thereto. The State has no power or jurisdiction over this subject matter, without express authority of or permission from Congress, authorizing the State to exercise such taxing power or jurisdiction. *No such permission has been given by Congress.*

Third: The assessment, by the state of Iowa, or by its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of the shares of stock in the hands of the individual shareholders, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax from its own funds, without giving to the corporation a right of full recoupment of the tax so paid, from the funds of the shareholder, which may be in its custody, or which may subsequently be received by the corporation, where no other property of the shareholder is, at any time, in the possession or custody, or under the control, of the corporation, and without giving to the corporation the right to retain sufficient of said funds of the shareholder to make full recoupment therefrom to said corporation, is a taking of the property of the corporation to pay the debt or obligation of another, the shareholder, and constitutes a taking of the property of the corporation without compensation and without due process of law, in contravention of the XIV Amendment to the U. S. Constitution.

Fourth: The assessment, by the state, or its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of shares of stock in the hands of the individual shareholder, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax from its own funds, merely giving to the corporation, at its own expense, the right to sue each of the numerous shareholders, in separate personal actions, to recover the tax so paid, or, at its own expense, to enforce a lien created upon the shares of stock taxed, belonging to each individual shareholder by a sale of the shares of each for the amount of the tax so paid, with the alternative of losing the amounts paid by said corporation to discharge the tax on the shares, is a taking of the property of the corporation without compensation, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution.

Fifth: The failure or refusal of the laws of the State of Iowa to grant to State Banks, Savings Banks, (of which plaintiff in error is one), and Loan and Trust Companies, organized under the laws of that State, the right to retain and recoup the corporation, from funds or property of each individual shareholder, to the extent of taxes assessed upon the shares of stock held by each shareholder, which have been paid by the corporation, while granting such right of retention and recoupment to National Banks and to all corporations organized under the laws of said State, other than the corporations first above named, is a denial to Savings Banks, and to plaintiff in error, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

Sixth: Compelling a part of the corporations organized under the laws of the State of Iowa, *as agents, to become primarily liable to the State*, or its taxing subdivisions, for the payment of the taxes assessed upon the shares of stock of said corporations owned by the individual shareholders, the real principals, while making *other agents*, to whom the property of their principals is assessed, liable for the payment of the tax assessed, only to *the extent of the money, funds or property of the principal in their possession*, said tax to be paid out of said money or funds, or the proceeds of said property of the principal, is a denial to the corporation, first above mentioned, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

DIVISION 3.

The assessment for taxation, complained of, was, in fact and in legal effect, made upon the capital or capital stock of plaintiff in

error, without deducting that part thereof invested in United States Bonds. Such assessment, and the statute of Iowa held to support the same, are each in contravention of the federal constitution and statutes.

In fact, and in legal effect, the assessment for taxation complained of by the Home Savings Bank, plaintiff in error, was an assessment upon the *capital or capital stock* of plaintiff in error, including $32,675.00 thereof, invested in Bonds of the United States without exempting or deducting said U. S. Bonds; which said assessment for taxation was made and sustained under the provisions of Section 1322 of the Code of Iowa of 1897. Said assessment, and said statute, in so far as it has been held to sustain said assessment for taxation are each in violation of the Constitutional powers of the United States to borrow money etc., and in violation of the Statutes of the United States, and in violation of the decisions of this court concerning the exemption of such U. S. Bonds from taxation by the State.

Iowa Statutes on Taxation of Corporations: The parts of Sections 1322, 1323 and 1325, of the Code of Iowa of 1897, which relate to the assessment and collection of taxes upon the shares of stock of corporations, are as follows:

"*Section* 1322: Shares of stock of *National Banks* shall be assessed *to the individual shareholders* at the place where the bank is located. Shares of stock of *State and Savings Banks* and Loan and Trust Companies shall be assessed *to such Banks* and Loan and Trust Companies and not to the individual shareholders.

"*Section* 1323: The shares of stock of any corporation organized under the laws of this state, except those which are not organized for pecuniary profit, *and except corporations otherwise provided for in this act*, shall be assessed to the owners thereof, at the place where its principal business is transacted, the assessment to be on the value of such shares on the first day of January in each year.

"*Section* 1325: The corporations described in the preceding sections *shall be liable for the payment of the taxes* assessed to the stockholders of such corporations, and such tax shall be *payable by the corporation* in the same manner and under the same penalties as in case of taxes due from an individual tax-payer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock, and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such

"corporation in this State, after giving the stockholders thirty "days notice of the amount of such tax and the time and place of "sale, such notices to be by registered letter addressed to the stock-"holder at his postoffice address, as the same appears upon the "books of the company, or is known by its Secretary."

Settled Law. The law is well settled, by this court, that a State tax, upon the *capital or capital stock* of a corporation, is a tax upon United States bonds purchased with the whole or any part of such capital; and that a tax, assessed and levied by the State on U. S. Bonds, is in contravention of the Constitution of the United States giving the government the power to borrow money, etc., and in violation of the Statutes of the United States exempting such bonds from State taxation.

Weston vs. City Council; 27 U. S., (2 Pet.) 449, (7 Law 481).

People (N. Y.) vs. Commissioners; 67 U. S. (2 Black) 620, (17 Law 451).

People (N. Y.) vs. Commissioners; 67 U. S. (2 Black) 635, (17 Law 456).

People (N. Y.) vs. Commissioners; 69 U. S. (2 Wall.), 200, (17 Law. 793).

Bradley vs. People (Ill.); 71 U. S., (4 Wall.) 459, (18 Law 433).

Society vs. Coite; 73 U. S. (6 Wall.) 594, (18 Law 897).

Hamilton Co. vs. Mass., 73 U. S. (6 Wall) 632, (18 Law 904).

National Bank vs. Kentucky, 76 U. S. (9 Wall) 353, (19 Law 701).

Home Insurance Co. vs. New York; 134 U. S. 598 (33 Law 1029).

Iowa Decisions: The decisions of the Supreme Court of Iowa are in full harmony with the holdings of this Court. As early as 1880, the Iowa Court in the case of the *German American Savings Bank vs. The City of Burlington,* 54 Iowa, 609, held that the taxation of the *capital of a Savings Bank* was illegal and unwarranted to the extent that such capital was invested in bonds of the United States, citing and following *2 Black* 620, *2 Wall.* 200, *and 2 Pet.* 449, mentioned above. And this holding was approved and followed in 1895 in *Ottumwa Savings Bank vs. City of Ottumwa,* 95 Iowa, 176. In 1886, the same court held the same doctrine in *Campbell vs. City of Centerville,* 69 Iowa, 439.

It will be seen that the Iowa Court is in entire harmony with this court upon the question involved. Indeed the Iowa Court has at

no time departed from this doctrine. It reached the decree sought to be reviewed because of a change real or fancied in the legislation of the State, and not because of any change in, or overruling of, its prior decisions.

This being true, if it shall appear in the instant case that the assessment was actually, or in legal effect, upon the capital of the bank, or that there has been no change in the law then it is clearly illegal because opposed to the Federal Constitution, Statutes and decisions and the Iowa decisions and ought to be annulled.

In support of our contention that the assessment was not only in legal effect, *but in very fact* upon the capital of the bank we direct attention to the controlling facts in connection therewith.

Facts of the Assessment Actually made: Miller, the cashier of plaintiff in error, in April 1902, made to the local assessor of defendant in error, a verified statement in writing. (Exhibit "1"), showing *moneys and credits* of plaintiff in error, subject to taxation in the sum of $65,595,00, consisting of the *Bank's capital stock and a surplus* of $10,000 etc., and further showing a claim of exemption to the extent of $32,675.00 upon bonds of the United States in which part of the capital of the bank had been invested, and also claiming a deduction of $3,854.00 for real estate owned by the bank and separately assessed, leaving subject to taxation, after deducting said U. S. Bonds and the separately assessed real estate, the net amount of $29,064.17. (Trans. 15).

It is conceded of record that plaintiff in error owned and held, on January 1, 1902, the date as of which this assessment was made, U. S. Government bonds in the said sum of $32,675.00. (Trans. 18, Lines 7-10).

Thereafter the assessor gave to the Bank a notice of assessment, or duplicate Assessment Roll, No. 6572, (Exhibit "2"), dated April 9, 1902, assessing the Bank *upon moneys and credits* in the sum of $39,486.33. (Trans. 15, Lines 27-30). It is conceded, of record, that this was $10,000 too much, and should have been only $29,486.33. (Trans. 16, Lines 6-9).

The assessment Roll No. 6752, was originally carried on to Page 102, Line 24 of the Assessment Book, *as an assessment of the property of the bank, under the heading of moneys and credits,* in said sum of $39,486.33, said amount being subsequently changed on said book, as hereinafter stated. (Trans. 16, Lines 13-18). This assessment, on the Assessment Book, as corrected or changed, and the levies made thereon, were afterwards carried on to the official tax list, by the County Auditor.

A little later, the assessor, by his deputy, Beck, delivered to the Bank another notice of assessment, or a second assessment Roll, No.

5996, (Exhibit "3") assessing the bank in the sum of $61,739.00 *on corporation stock.* (Trans. 15, Lines 31-34). *This assessment was never carried on to the assessment book or on to the tax list.*

The Assessment Books were made up by the assessor. The record concerning the Assessment Book and Tax list, offered in evidence, is as follows:

"Plaintiff also offers in evidence the assessor's book of the "fourth assessorial district of the city of Des Moines for 1902, "showing upon line 24 on double page 102, that it is assessment "roll No. 6572, assessing the Home Savings Bank under the head "of *'moneys and credits'* with the sum of $58,783, the taxable val- "uation of the same being $14,696.00, (25 per cent of the assessed "actual value).

"Plaintiff also offers in evidence from the tax list of the same "district for the year 1902, the first line of page 319, showing an "assessment against the Home Savings Bank under the head of "taxable value of *personal property* in the sum of $14,700.00. "(Trans. 16, Lines 13-22)."

No other part of this Assessment Book was offered in evidence, and there is no conflict or dispute as to this record.

There was some question made with the assessor about some bad debts held by the Bank which accounts for the reduction of the amount from $61,739.00 to the sum of $58.783.00. It was the original Assessment Roll, No. 6572, *upon moneys and credits,* which was carried on to the Assessment Book with the amount increased from $39,486.00, ($10,000 too much), to $58,783. Either the original Assessment Roll, No. 6572, was carried on to the Assessment Book just as it was, and the amount thereafter, changed, or that Assessment Roll was corrected in its amount and then, as corrected, carried on to the Assessment Book. Assessment Roll No. 5996, *on corporation stock, was never carried on to the official Assessment* Book, or on to official Tax List.

Concerning the second assessment or attempted assessment, No. 5996, (Ex. 3), the deputy assessor Beck, testified that they took the capital stock, $50,000.00, the surplus of $10,000, and the undivided profits of $5,595.00, making a total of $65,595; from that they deducted the value of the real estate $3,854, leaving $61,741 subject to taxation. He took it for granted that their shares must be worth that much money. (Trans. 19, lines 19-24).

It is unquestioned that the government bonds owned by the Bank were not deducted from the amount of the assessment made on the Bank's *moneys and credits* or personal property.

The assessor might have intended to change the first assessment which he made, but he failed to carry out such intention, and never

did, in fact, enter upon his official Assessment Book any assessment *upon the shares of stock, or on corporation stock.* The only assessment actually entered upon said Assessment Book, against plaintiff in error, was upon its *moneys and credits* entered on Assessment Roll, No. 6572, with the amount somewhat increased.

The State of Iowa has a Summary System of Taxation. Under this system, the assessment for taxation is made by an assessor, whose duties commence immediately after the second Monday in January of each year (Code of 1897, Sec. 1352). The first step in the assessment is made on what are respectively designated as "The Assessment Roll," and "Assessment Roll, Form 2," severally used for different kinds of personal property. (Code Supp. of 1902 Sec. 1360).

The Assessment Rolls are made out in original and duplicate, and the duplicate is signed by the Assessor, detached from the original and delivered to the person assessed. This constitutes his notice of assessment. (Ib.—Sec. 1360). The assessment is required to be completed by the assessor by the first day of April of each year. The statutory oath of the assessor is then attached to the assessment rolls. (Code of 1897—Sec. 1365).

The assessment rolls, thus verified, are then delivered to the local Board of Review—(Code of 1897—Sec, 1366). In a city the local Board of Review consists of the City Council, (Code of 1897-Sec. 1370), and it has power to confirm, correct, or, upon notice, add to the valuation of property, or assess additional property, and to hear complaints of any persons aggrieved by the action of the assessor. This Board of Review must complete its work not later than May 1st of each year. (Code of 1897—Sec. 1370; Code Supp. of 1902—Sec. 1371, 1372; Code of 1897—Sec. 1373).

The County Auditor is also required to deliver to each assessor two Assessment Books, which are thus delivered, together with the two sets of blank forms of Assessment Rolls, before the assessor commences his assessment.

When the review and revision of the assessments has been completed by the local Board of Review, the assessor is required to make up the two Assessor's Books, in duplicate, allowing a sufficient number of pages to each letter, and, when completed, he is required to deliver one completed Assessment Book to the City Clerk, and the other completed Assessment Book together with the Assessment rolls, to the County Auditor. (Code of 1897—Sec. 1366).

In practice, the Assessment Books are made up almost concurrently or *pari passu* with the making of the Assessment Rolls; and when these Rolls have been revised by the action of the local Board

of Review, the books are corrected to correspond with the changes made. They are then completed, and verified as corrected, by the assessor, and one of them is delivered to the county Auditor.

No claim is made, in the record before this court, that the Assessment Book returned by the assessor to the County Auditor, and the official Tax list subsequently made up therefrom by that official, were not correctly made.

There are statutory provisions for the equalization of values between townships, towns, and cities by the County Board of Review; between the several counties, by the State Board of Review, and for certifying the changes so made to the County Auditor. There are also statutory provisions for levies of taxes to be made by different bodies, and certified to the County Auditor. None of these provisions affect this case.

From these Assessment Books, certificates of equalization and certificates of levies, delivered to the County Auditor, that officer makes up the official Tax list, (Code Sec. 1383), which he is required to deliver to the County Treasurer on or before Dec. 31st of each year. (Code Sec. 1387). This tax list is, by statute sufficient warrant to authorize the collection of the taxes shown therein by distress and sale of personal property, (Code-1406-1407), or by sale of real estate by the County Treasurer in the presence of the County Auditor, in the manner provided by law. (Code Secs. 1418 to 1432).

The assessment in question, as carried onto the Tax list (above quoted) by the County Auditor and delivered to the Treasurer, is upon *personal property* of the Bank, of the taxable value of $14,700. The Assessment Book, (above quoted) assesses said bank on its *moneys and credits* in the sum of $58,783, having a taxable valuation of $14,696.00, and this was founded upon Assessment Roll No. 6572, upon *moneys and credits* of the bank, in a less sum, the amount having been increased when it was carried on to the assessment book, or by correction of said book, but no other change was made in this Assessment Roll, No. 6572, or in the Assessment Book.

On the official books or records relating to this assessment and taxation of plaintiff in error, there is not the slightest suggestion of any attempt to tax to the bank the corporate shares of stock in the hands of the individual shareholders, but the assessment is upon Bank *moneys and credits*, or Bank *personal property*.

The official record of the transactions, which the Board of Review is required to keep, by its clerk, (Code-Section 1371), states, that on Roll Call No. 329, the local Board of Review, upon the report of its committee to that effect, ordered that: "The assess-

" ment against the Home Savings Bank *stand approved* as made " by the assessor." (Trans. 16, lines 32-36). The report of the committee was: "We recommend that the assessment stand approved." (Trans. 16, Lines 29-30).

On appeal from the action of the Board of Review, taken to the State District Court, which was tried *de novo*, in equity, on the merits, the final decree dismissed the appeal at plaintiff's cost, (Trans. 19), thus affirming the assessment as made by the assessor, on the assessment book, and as carried on to the official tax list.

On the Appeal from the State District Court to the State Supreme Court, after a trial *de novo*, in equity, on the merits, the final judgment of the Supreme Court affirmed the judgment below, at the cost of the appellant, the Bank, (Trans. 22), thus again affirming the assessment as made by the assessor on the Assessment Book, and as carried on to the official Tax List.

The assessment, which was in fact made and thus affirmed was upon the *moneys and credits or personal property* of the corporation, not upon the *shares of stock*, in the hands of the shareholders.

But the *moneys and credits or personal property* of the Bank is that in which the capital or the capital stock of the bank is invested, all excess of moneys and credits being offset by debts to depositors, etc. The only *moneys and credits* returned by the bank was its *capital stock and surplus*. A tax on such moneys and credits or personal property is a tax on the capital or capital stock of the Bank, which included $32,675.00 of U. S. Bonds, exempt from taxation by the State. *People (N. Y.) vs. Tax Comm.*, 69 U. S., (2 Wall) 200, (17 Law 793).

In *Tennessee vs. Whitcomb*, 117 U. S., 129, (29 Law 831), the capital paid in was to be used in building and equipping a railroad. This court speaking through *Mr. Chief Justice Waite* said:

"In this way the capital of the corporation was to be converted " into the railroad and its appurtenances. A tax upon the railroad " therefore, after its completion, is necessarily a tax upon the cap- " ital, because practically the capital and that into which it has " been converted are the same." (Official page 135; Law page " 831—right column)."

The Supreme Court of Iowa did not expressly pass upon this point although it was directly presented by the record before that Court, (Trans. 21-22), but it was impossible to affirm the assessment complained of without deciding this point against appellant, (in that court), the plaintiff in error herein. In any view, the only assessment, which, in point of fact, was made and carried onto the Tax Books, and as to which there is no conflict in the rec-

ord, *was an assessment upon the capital stock of plaintiff in error,* without deducting the exempt United States bonds, and was in violation of the Constitution and Statutes of the United States, giving to the government the power to borrow money etc.

Section 1322 of the Iowa Code: This assessment purports to have been made under Code Sec. 1322. It was sustained by the State Supreme Court under said Sec. 1322. Plaintiff in error contends that the assessment itself, and the statute under which it was made and sustained are severally unconstitutional, as authorizing the taxation of bonds issued by the United States.

It is also settled law that the construction and interpretation of the statutes of a State by the highest court of that state are conclusive upon this court: 141 U. S. (35 Law 613); *Palace Car Co. vs. Pennsylvania*, 154 U. S., 421, (38 Law 1031); *Pittsburg R. Co. vs. Backus.* 166 U. S. 440 (41 Law 1069); *1st Nat. Bank vs. Chehalis Co.*

But the decisions of the State Court are not conclusive upon this court on the points, that the assessment actually made, and the law under which it was made and sustained, were not in violation of the U. S. Constitution and Statutes exempting U. S. Bonds from State taxation. These are Federal questions.

It was attempted to sustain the assessment actually made, because a valid assessment of similar or identical amount could have been predicated upon the value of the shares of stock in the hands of the shareholders. This is only an assertion of the doctrine of equivalency condemned by this court. Suppose the assessment had been based upon cattle and hogs, of which the bank owned none. Could such an assessment be sustained upon the theory that an assessment of equal amount could have been made upon the shares of stock held by the stockholders?

But plaintiff in error contends that the assessment, actually made, was upon the capital stock of the Bank, including that part thereof invested in U. S. Bonds, and the assessment complained of, and the State law authorizing such assessment, as sustained by the Iowa Supreme Court, are unconstitutional and void, in the respects stated.

That some other or different assessment might have been made which would have been valid and constitutional, does not validate the assessment actually made if that assessment was unconstitutional and void, even though the State Supreme Court affirmed the assessment which was, in fact, made.

In *Owensboro N. Bank vs. Owensboro*, (City) 173 U. S. 664, (43 Law 850), where the tax was assessed on the franchise and intangible property of a National Bank, and not upon the shares

of stock in the hands of the individual owners, the opinion by *Mr. Justice White*, said:—

"It is, however urged, that whilst the taxes may not be, in form "imposed on the shares of stock in the names of the shareholders, "and may be, in form, a tax upon the franchise or property of "the bank, nevertheless they are equivalent to a tax on the shares "of stock in the names of the shareholders, and therefore do not "violate the Act of Congress. But this proposition concedes that "the taxing Statute does not conform to the Act of Congress, "and yet invokes its permissive authority, since, as already shown, "without the grant made by the Act of Congress there would be "no power to tax at all. Passing, nevertheless, this contradiction, "and looking beneath the mere form, we come to the substance "of things." (Official page 676; Law page 855 right column). * "It is unnecessary to multiply citations on this subject, as the "question has been in recent cases reviewed and re-stated fully "by this court. Thus, in *Bank of Commerce vs. Tennessee*, 161 "U. S. 146 (40 Law 649), it was said, through *Mr. Justice Peck-"ham*: 'The capital stock of a corporation and the shares into "which such stock may be divided and held by individual stock-"holders, are two distinct pieces of property. The capital stock "and the shares of stock in the hands of the shareholders may "both be taxed, and it is not double taxation.' (Official page 681; "Law page 857—right column). * There being no equivalency "between the assessment of the bank and the assessment of the "shares in the names of the shareholders, it follows that the tax "here complained of, which was assessed on the franchise or in-"tangible property of the corporation, was not within the pur-"view of the authority conferred by the Act of Congress, and "was therefore illegal. (Official Page 682; Law page 588-left "col.)".

It is clear that the assessment in fact made upon the *moneys and credits* of plaintiff in error, in the case at bar, cannot be sustained on the doctrine of the alleged equivalency of the taxation.

The legal effect of the Assessment actually made. Conceding, for the purpose of argument only, that the assessment was in form upon the "shares of stock" and not upon the "moneys and credits" or "personal property" (the capital) of the bank, the legal effect or result is the same.

In *City of New Orleans vs. Houston*, 119 U. S. 265, (30 Law 415), the legislature of the State of Louisiana passed a law (Act No. 25 of the year 1868), organizing the Louisiana State Lottery Company, requiring said company to pay, as taxes, $40,000 per annum, to the State of Louisiana, and exempting it from all

other taxes and licenses of any kind whatever assessed by the State, parish or municipal authorities. Sections 4 and 5 of this Act gave this company certain monopoly rights and privileges. This incorporating Act was repealed by a subsequent Act of the Legislature. (Act No. 44, approved March 27, 1879). Thereafter the Constitution of that State was amended, in December 1879, and Article 167 thereof revived the charter of the Lottery Company, and recognized it as a contract binding on the State, except as to its monopoly clause, which was abrogated. By virtue of another Act of the legislature the municipal taxing authorities were about to levy a tax upon the capital stock of the Lottery Company and upon the shares of stock held by the shareholders of said company. After submission of the case, a decree was passed whereby the imposition of such a tax was enjoined by the U. S. Circuit Court.

In this court the decree was affirmed. The Lottery Company was held exempt from this taxation. But it was also claimed by the appellant, (City) that the exemption did not extend to the shareholders of stock of the Lottery Company, on account of their shares of its capital stock held by them as individuals. It therefore became necessary for this Court to examine into the essential features of the law imposing the tax, so as to determine whether the tax was, in reality, *one upon the Corporation or one imposed upon the shareholders.*

After stating the well settled propositions that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent, clearly expressed, that both may be taxed. (Official page 277, Law 415—left col.—,) the opinion, by *Mr. Justice Matthews,* said:

"In the present case the Corporation is exempted by its charter "from all other taxes and licenses of any kind whatever in excess "of the sum of $40,000 per annum, and yet by act No. 77, though "*the assessment is not to be made upon its capital stock, but upon* "*the shares of shareholders* appearing upon its books, nevertheless, "the tax so assessed it is to be *paid by the Company*, although it is "entitled to collect the amount so paid from the shareholder on "whose account it is payable: but this payment by the Company "is to be made *irrespective of any dividends or profits* payable to "the share holders out of which it might be paid. That it is sub"stantially a tax *upon the corporation itself,* is unequivocally "shown by the subsequent clause, which authorizes a deduction "from the amount of taxes assessed to each share, of its propor"tion of the direct taxes paid by the Company as such under Sec"tions 1 and 3, and of all exempt property belonging to the cor"poration. But as all the property of the Louisiana State Lottery

" Company is exempt from taxes after payment of the annual sum " of $40,000, nothing remains to be charged as a tax upon the " shareholder as distinct from the Corporation under the provisions " of this section. Indeed, it is quite apparent from the language " of the whole section, that, *while nominally the taxes authorized* " *are not to be assessed upon the capital stock* of the corporation " in the aggregate and as its property, *yet in substance that is its* " *effect. The taxes are assessed upon the actual shares as registered* " *in the names of individual shareholders but are to be paid by* " *the Corporation*, so that while the form and mode of taxation is " changed, its substance remains as though assessed against the Cor- " poration by name."

"The case differs altogether from that of *U. S. vs. R. R. Co.*, " 17 Wall. 322, (84 U. S. 21 Law 597), in which it was held that " the tax provided for in the 122d section of the Internal Revenue " Act of 1864, as amended, requiring railroad and other corpora- " tions to pay a tax upon interest and dividends payable by them, " with the right to deduct the same from the amounts otherwise due " to creditors and stockholders, was a tax upon the latter and not " upon the corporation, because the corporation was made use of " merely as a convenient means of collecting the tax, and it cannot " be considered as ultimately a tax upon the shares, as the prop- " erty of the shareholders, within the principle of the decision in " *Nat. Bank v. Commonwealth*, 9 Wall. 353 (77 U. S. bk. 19, L. " ed. 701.) There the Act of Congress expressly distinguished " between the taxing of the bank and the taxing of its shareholders " on account of their shares, and, as was held in that case, left it " open to the state to collect the tax levied on the shares by impos- " ing the duty of collecting it upon the Corporation. That, we " think, is prohibited in this case by the terms of the contract con- " tained in the charter, which exempts the corporation from the " payment of all taxes whatever in excess of the specified annual " sum, whether levied on it or to be paid by it on any account what- " ever. A tax such as that sought to be imposed upon the com- " pany by the appellees *is a tax upon the corporation* within the " meaning of the prohibition of its charter, *because it is compelled* " *to become surety for taxes nominally imposed upon its stock-* " *holders, and is made liable primarily for their payment;* a pay- " ment which, in the first instance, must be made out of the cor- " porate property, without other recourse than an action against " individual stockholders to recover the amounts advanced on their " account." (Official Pages 278-280; Law pages 415-416)."

In the cited case, the property of the Lottery Company was all exempt from taxation under the State Constitution. In the case at bar the capital stock of plaintiff in error, so far as invested in

U. S. Bonds, was exempt from taxation under the U. S. Constitution and statutes. In each case the property exempt from taxation was and is alone involved in the controversy.

In the cited case, the assessment purported to be upon the *shares of stock*. In the case at bar, the assessment is upon the *moneys and credits*, of the Bank, less the value of real estate otherwise assessed, and the same does not purport to be assessed upon the shares in the hands of the shareholders, although the claim is made that the tax is upon the shares, notwithstanding the assessment is against the corporation.

In the cited case, a right of recovery of the tax by the corporation from the shareholder was given by statute. In the case at bar there is no such right of recovery given to the Banks, of which plaintiff in error is one.

By the statutes of Iowa, set out at the commencement of this division of our brief, for the purpose of the assessment for taxation of shares of stock of corporations, such corporations are divided into two classes. The first class is where the shares of stock are assessed to the individual stockholders, at the principal place of business of the corporation, including National Banks; (Code of 1897—Section 1322), and also including all corporations organized under the laws of Iowa, except those otherwise provided for by law.' (Code of 1897—Section 1323). The second class includes State and Savings Banks and Loan & Trust Companies, being the corporations, above referred to as 'otherwise provided for by law' whose shares of stock are to be assessed to said Banks or Companies 'and not to the individual stockholders.' (Code of 1897—Section 1322).

As to the corporations whose shares of stock are assessed to the shareholders, Code of 1897—Section 1325 provides:—"The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations," with provisions as to the payment to and collection by the State, of the tax from the corporation. The statute further gives to "such corporations" the right to recover from the stockholder his share of the tax paid by such corporation, and creates a lien in favor of such corporation, on the stock and dividends of said stockholder, with a provision to enforce such lien by a sale thereof by the sheriff after notice by registered mail as provided in said statute.

This right of recoupment is limited to the Corporations whose shares are assessed to the stockholders. There is no such right of recovery or lien given or created in favor of Savings Banks, (including plaintiff in error), or of State Banks and Loan & Trust

Companies, to which the shares of stock of their stockholders are assessed, which shares, the law expressly says. shall not be assessed to the individual stockholders. The liability of the Bank is primary, without right of recoupment from its stockholders, and without regard to any dividends or property which may be in, or come into, its possession or under its control, and, in the case at bar, under an assessment expressly made on the moneys and credits of the bank, without deducting its U. S. Bonds.

We have already suggested that the present doctrine of the Iowa Court is based upon a change, real or fancied, in the legislation of the State. Let us examine the old and the new statutes and inquire if they warrant final judgments contradictory of, and diametrically opposed to, each other.

The old statute is Chap. 29, Acts of 23rd Gen. A., and provides as follows:

"*All shares* of the capital stock of banking associations organi-
" zed under the general incorporation laws of this state, known
" as state or commerical banks, *shall be assessed to such banks*, in
" the city or town where located and not to the individual share-
" holders."

In 1895, and under this statute, the Iowa Court decided the case of *Ottumwa Savings Bank vs. Ottumwa*, 95 Iowa 176, following and approving *German American Savings Bank, vs. Burlington*, (1880) 54 Iowa, 609, and *Campbell vs. Centerville*, (1886), 69 Iowa, 439, in all of which three cases it was held that the capital of a bank, in so far as it is was invested in U. S. Bonds, was exempt from taxation because of Federal law. As before stated, these holdings were also in harmony with the decisions of this Court on the same subject.

The new statute, Sec. 1322, of the Code of 1897, provides as follows:

"*Shares of stock* of state and Savings Banks, and loan and trust
" companies, *shall be assessed to such banks* and loan and trust
" companies, and not to the individual stockholders."

Under this statute the Iowa Court has held in the instant case that in assessing *to the bank* the shares of its stock, no deduction shall be made because of its capital being invested, in whole or in part, in U. S. Bonds.

Bringing these two statutes into juxtaposition and scanning them carefully, we see that the old provides for the taxation of "all shares of the capital stock" and the new provides for the taxation of "shares of stock." Of course, the phrase "shares of stock" in the new statute has reference to shares of the capital stock of the bank. No one would claim that shares of stock in other cor-

porations, owned by the stockholders of a bank, should be assessed to the bank. We observe then that both statutes deal with the same subject matter, to-wit: *shares of stock of the capital* of a bank.

It is next provided in both of the statutes that such shares "*shall be assessed to such banks.*" In this respect there is no difference, not only in the spirit of the enactments, but in their verbiage as well.

Again the old statute provides that the shares of stock shall not be assessed "to the individual shareholders," whereas the new statute provides that the shares of stock shall not be assessed "to the individual stockholders."

We submit with great confidence that there has been no change in the legislation of the State. The two statutes are identical in spirit and effect. The old one is in the language of the legislature of the State, ordinarily expressed. The other is the language of the Code commissioners whose duty it was to arrange and codify the law without making any change, and who in their report say that a change in the language is not intended to imply a change in the law. Beginning with the last paragraph on page 3 of the report of the code commissioners, we find the following:

"It must be distinctly understood that a change of language does "not necessarily indicate any intention to change the meaning of "the law. The Commission is authorized to rewrite the sections "of the Code and statutes for the purpose of improving the ex- "pression of the law and it has faithfully done so."

Since there has been no change in the legislation of the State, the decree of the Iowa Court in the instant case not only overrules its own earlier decisions, but puts it in hostility to the decisions of this court. By reversing said decree, the Iowa Court will be restored to harmony with itself as well as harmony with this court. If there had been new legislation to the effect that the shares of stock, should be taxed to the shareholders, but that the tax should be paid by the bank out of property in its hands belonging to the shareholders, being the Iowa mode of assessing and collecting taxes on the shares of National Banks, if the bank were simply made the agent of the State for the collecting of the taxes, and was furnished with full measures for indemnification against the shareholders or recoupment for taxes paid by it for them the situation might be different; though we submit that even in such case there would be no substantial difference.

In other words, assessing the shares of the capital of the bank to the bank, and making it liable for the payment of the taxes, reduces the property of the bank, to-wit: its capital and profits, by so much as is used in paying the taxes; and by the same amount, divi-

dends payable to the shareholders are reduced. If the *shares of stock* belonging to the shareholders are taxed, either to the bank or the shareholders, *and the bank made primarily liable* for the payment of the tax, then precisely the same result follows. The property of the bank to-wit: its capital and profits, is reduced precisely as before, and the dividends payable to the stockholders are correspondingly reduced. In yet other words, while it is true that the capital of the bank belongs to the bank, yet in a certain well defined sense, that same capital belongs to the shareholders. Upon retiring from business, after the payment of creditors, it is returned to the shareholders for the very reason that it belongs to them. Refine upon the subject as we may, we submit there is no escape from the conclusion that whether the tax is levied upon *the capital*, or upon the *shares of stock*, the result, both to the bank and the stock holders, is the same. This being true, we submit there is no substantial reason for holding that if the tax is assessed upon *the capital*, the government bonds shall be deducted; but if it is assessed upon the *shares of stock*, the bonds shall not be deducted.

It is possible that we exhibit an unusual degree of temerity in taking this position. It is also possible that in some cases, courts have attempted to define a difference between taxation of *capital* and taxation of *shares of capital*. In many of the cases we find expressions falling from the judges that indicate that they are not fully satisfied there is any real difference between the two, as it seems to us there is not.

We suggest further that we are now in a Court of Equity, where forms and shadows must give way to substance—a forum which endeavors to get at the very right of the matter. It is conceded on all hands that if the capital of the bank is taxed, the amount thereof invested in Government Bonds must be deducted. It is claimed, however, by defendants in error that if, nominally, the shares of stock are taxed. *though directly to the bank*, as claimed in this case then and in such case, the amount of the capital of the bank invested in Government Bonds is not to be deducted. We respectfully submit that herein we have an example of legal differentiation which is strangely foreign to proceedings in a court of Equity. It is a proposition or theorem in geometry that things which are equal to the same thing are equal to each other. The same proposition or theorem holds good in law, particularly in a court of Equity. Whether the tax be levied upon the capital of the bank, or upon the shares of stock, the result is identically the same, both to the bank and its shareholders. This cannot be gainsaid. This being true, there should be no deduction for Government bonds in either case, or there should be the same deduction in both cases.

Deduction of debts from value of credits: The decree complained of runs against another difficulty and inequity. These statutes are so framed that the Bank is primarily liable for, and must pay the full amount of, the tax without deduction, although the individual stockholder may be entitled to a deduction, in making up the assessment of the value of his shares of stock. We take it to be the law that the Bank, in any event, could not recoup or recover from any of its shareholders any sum in excess of that which the shareholder could have been legally assessed with, if he had given or listed his own shares for assessment for taxation; and any sum which the Bank is required to pay, in excess of that which the shareholder could have been legally required to pay, is a direct tax on the bank capital or capital stock, including the U. S. Bonds in which any part of such capital is invested, and is not a tax on the shareholder.

Code of Iowa (1897), Section 1311, provides:

"In making up the amount of money or credits which any per-
"son is required to list, or to have listed, or assessed, including the
"actual value of any Building and Loan shares, he will be entitled
"to deduct from the actual value thereof, the gross amount of all
"debts in good faith owing by him."

Code of Iowa, (1897) Section 1361, as amended in 1898 by Chap. 30, of the Acts of the 27th General Assembly, relating to the making out of an assessment Roll, Form No. 2, provides that the person, (natural or artificial) making the same "shall enter and set out such liabilities as they claim should be deducted from the total of their moneys and credits." (Code Supp. of 1902—Sec. 1361).

We regard it as settled law, in Iowa, that shares of stock in National Banks are 'credits,' within the meaning of the statutes of the state relating to taxation, and the shareholder is entitled to deduct his just debts from the value of such shares when the same are assessed for taxation. *Redhead v. Iowa N. Bk.;* 103 N. W. (Iowa), 796. *Primghar St. Bank vs. Rerick*, 96 Iowa 241, 242. *First National Bk. (Albia) v. City Council*, 86 Iowa 34. *Richards v. Rock Rapids;* 31 Fed., (CC-ND), 505, 512.

As to the deduction of debts from the value of shares of stock. *other than those of National Banks*, the decisions of the Iowa Supreme Court are as follows:

In *Bridgman v. Keokuk*, 72 Iowa, 42, decided in June 1887, the Supreme Court held, that shares of stock in a building and loan association, were not 'credits,' from the value of which the owner was entitled to deduct his 'debts.' when listing for taxation his shares of stock in such association. The principles upon which

the case rested, were that the owner of the shares had an equitable interest in the property of the corporation, and that the relation of debtor and creditor did not exist between the corporation and the stockholders. The statute however has since been amended. Building and Loan shares are now "credits" from which deductions may be made. (See Sec. 1311, *supra*).

The relation of the corporation to its stockholders, as debtor and creditor, again came up and was considered, by the Supreme Court of Iowa in the case of *Equitable Life Ins. Co. v. Board of Equalization*, 74 Iowa, 178, finally decided in March 1888, both parties appealing. This case, on first submission, was affirmed on plaintiff's appeal and reversed on defendant's appeal; but, on rehearing the case was reversed on plaintiff's appeal and affirmed on defendant's appeal. The original opinion in this case was handed down March 14th, 1887, (32 N. W. 376), some three months before the decision of the "Bridgman" case and was doubtless considered as authority when the 'Bridgman' case was decided, prior to the granting of the rehearing in this case.

The precise point involved was whether the amount coming to the stockholder from the corporation, was a 'debt' which the corporation was entitled to deduct from its 'credits' when listing them for taxation, and the final decision was that this amount was a 'debt', and the corporation was entitled to deduct the same from its 'credits' upon which it was liable for taxation.

The language used by the Court, through *Beck, J.*, is as follows:—

"The corporation being bound to pay the stockholders, its obli-
" gation so to do creates a 'debt' according to the definitions above
" given. It should, therefore, be deducted from the amount of
" the moneys and 'credits' in listing the same for taxation." (Page
" 182). "Our conclusion is that the amount owing the stock-
" holders, in the sense of the expression which accords with what
" we have said,—that is, the amount which the stockholder would
" be entitled to receive upon a present distribution of the money
" and credits of the corporation should be deducted from such
" moneys and credits of the corporation in listing them for taxa-
" tion." (Page 183—Par. VI).

In *First N. Bk. (Albia) v. City Council*, 86 Iowa, 28, decided in 1892, the question was whether shares of stock in a National Bank are 'credits' from the value of which the owner of the stock may deduct his 'debts' when listing the shares for taxation, and the holding was that they were such 'credits.' The case is fully considered as to shares of stock generally, both from the standpoint of the State statutes, and of the decisions of this court.

The Court, in its opinion by *Kinne, J.*, quoted in full, Section 1309, as follows:

"The term credit, as used in this chapter, includes every claim "or demand, due or to become due, for money, labor or other val- "uable thing, every annuity or sum of money receivable at stated "periods and all money or property of any kind secured by deed, "title, bond, mortgage or otherwise; but pensions of the United "States or any of them, or salaries or payments expected for ser- "vices to be rendered, are not included in the above term."

The conclusion of the Court, as to the construction to be given to the word 'credit' in this state statute, is thus stated in the opinion:

"We are clear that the logical result of the reasoning in the "*Equitable Life* case, above referred to, leads to the conclusion "that the stock held in the bank by O. D. Lockman and J. J. Drake, "respectively, was a 'credit' and they should be permitted to de- "duct their respective indebtedness therefrom. This conclusion "is not only satisfactory to us, *but also conforms the holdings of "this Court to the doctrine announced by the federal courts as ap- "plicable to stock in National Banks.* It would seem, if possible to "do so without doing violence to our statutes, the same rule as to "deducting debts from bank stocks should obtain as to banks, "*whether national or otherwise.*" (Page 36).

The opinion, then considered the power to tax National Banks, as derived from the Act of Congress, Rev. S. U. S., Section 5219, under the decisions of this Court, and the meaning of the word 'credits' as announced by other State Courts. On the subject of 'credits' and the deduction of 'debts' therefrom the opinion cited the following cases decided by this court: *Hepburn v. School Directors*, 90 U. S., (23 Wall.) 480, (23 Law 112), *People* (N. Y.) *v. Weaver*, 100 U. S., 539, (25 Law 705). *Cummings v. Nat. Bank*, 101 U. S. 153, (25 Law 903). *Supervisors* (N. Y.) *v. Stanley*, 105 U. S. 305, (26 Law 1044). *Evansville Bk. v. Britton*, 105 U. S., 322, (26 Law 1053). *Boyer v. Boyer*, 113 U. S., 689, (28 Law 1089).

The opinion, (Page 39), quoted from the "Hepburn" case in part as follows:

"Second: That a State which permits individual citizens to "deduct their just debts from the valuation of their personal prop- "erty of every kind, other than national bank shares, or which per- "mits the tax payer to deduct from the sum of his 'credits' at in- "terest or other demands to the extent of his *bona fide* indebted- "ness, leaving the remainder to be taxed, while it denies the same

" right of deduction from the cash value of bank shares, operates to " tax the latter at a greater rate than other moneyed capital."

The conclusion reached on the Federal branch of the case, was thus stated in the opinion:

"In view of these decisions by the Supreme Court of the United " States, it is clear that the holder of this stock must be placed in " the same position of advantage, with reference to the right to " deduct from the cash value of his stock his *bona fide* indebted- " ness, as the individual who owns no stock in any such corpora- " tion, but who has other 'moneys and credits'. In any event, we " would not be justified, in the light of the adjudications, in decid- " ing this case in accordance with the contention of the appellee, " *and thereby placing this Court in an attitude of hostility to the* " *decisions of the United States Supreme Court on a federal ques-* " *tion.* (Page 40)".

This *First Nat. Bank of Albia* case seems to decide, as plainly and clearly as language can speak, that, for taxation purposes, a share of stock is a 'credit' under the proper construction of the State statutes, and that the stockholders in banks, *whether National or otherwise*, are entitled to deduct their debts from the value thereof; that under the decisions of this court, they are also 'credits' for purposes of taxation; from the value of which the 'debts' of the shareholders of national bank stock may be deducted; that the conclusions as to the meaning of the word 'credit' under the State law is the more persuasively reached because it harmonizes the State and Federal decisions as to shares of stock being 'credits' for the purposes of taxation and deducting just debts therefrom.

We submit, therefor, that as to the meaning of the word 'credits' as including shares of stock of banks, 'whether national or otherwise', this was settled in 1892 in the case of *First Nat. Bank of Albia vs. City Council*, 86 Iowa 28, cited supra, and no decision has been made since that time, questioning or overruling the doctrine established in that case.

Under the rule established in the *First National Bank of Albia*, case, cited supra, the 'debt' of the corporation is a 'credit' on the part of the shareholder, for purposes of taxation, from which the shareholder may deduct his 'debts'. This ruling, as stated in that case, is also in harmony with the decisions of this court on the same subject.

This construction of the Iowa statutes is reasonable in itself, fair in securing like treatment to all banks, and is in harmony with the general law and the holdings of this court.

But if the deduction of 'debts' from shares of stock, as 'credits' is allowed, the statute, under which the assessment for taxation in question was made, establishes a liability of the bank which is a primary liability on its capital, including that part invested in U. S. Bonds, without any possibility of recoupment, from the shareholder, to the extent of the debts of the shareholder.

In any event, plaintiff in error claims that the assessment, as actually made, the legal effect of the assessment as made, and the legal effect of the statute held to authorize the assessment as made, is to impose a tax on the capital or capital stock of plaintiff in error, without deducting the part thereof invested in United States bonds, all of the same being in contravention of the U. S. Constitution and Statutes, and of the decisions of this court, on this subject.

DIVISION 4.

Congress alone has legislative power or jurisdiction to authorize or permit taxation, by any State, directly or indirectly of the bonds or other securities issued by the United States, or of the beneficial ownership thereof. The State has no power or jurisdiction over this subject matter, without express authority of, or permission from, Congress, authorizing the state to exercise such taxing power or jurisdiction. No such permission has been given by Congress.

The power and jurisdiction of a State to assess a tax upon shares of stock of a private corporation, organized under the laws of the State, notwithstanding that the capital of such corporation, or some part thereof, is invested in Bonds or other Securities of the United States, was, as to the points presented and decided, passed upon so recently by this Court, in the case of *Cleveland Trust Company vs. Lander, Treasurer*, (Ohio), 184 U. S. 111, (46 Law 456), that, under ordinary circumstances, we should deem the question settled law.

But, as it appears to us, the able and distinguished counsel for plaintiff in error, in the cited case, failed to present what we deem the fundamental and vital Federal question which lies at the root of the whole matter. We therefore, respectfully ask permission to state and succinctly present our contentions, before that case is considered as settling the law, on this subject.

We understand that it is the province of this court, in cases coming here, in error, to the highest court of the State, to consider and pass upon those Federal questions only which are duly presented in the record, and not to originate and decide questions not presented by the record, unless they affect the jurisdiction of

this Court to entertain the writ of error. The question now presented is, in our opinion, a new one, not heretofore brought up or determined by this Court. We are unable to find any case, decided by this Court, prior to the *'Cleveland Trust Company'* case, cited *supra, which involved the taxation of shares of stock of a State corporation*, where some or all of the capital of such corporation was invested in Federal Securities.

It is our claim that Congress alone has legislative power or jurisdiction to give or grant to a State, the right; directly or indirectly, to tax Federal bonds or securities. The State has and can have no power or jurisdiction, legislative, judicial or executive, over this subject matter, except under the express *affirmative* authority or permission of Congress.

We further contend, that so far as any questions of policy are concerned in this matter, they are Federal *legislative* questions, which Congress alone can establish or determine; and when so established or determined, the action of Congress, on this legislative question, is conclusive upon the Courts.

It is settled law that Congress has power to authorize or permit a State to assess a tax on the shares of stock in the hands of the shareholders of a corporation, organized under an act of Congress, as an instrumentality or means of carrying on or conducting some of the operations of the Government. (such as a National Bank, as established in the National Banking Act of 1864), without deducting from the value of such shares the value of the whole or any part of the capital of the corporation, invested in U. S. Bonds or other U. S. Securities. *Van Allen vs. Assessors*, (N. Y.), 70 U. S. (3 Wall) 573, (18 Law 229), and numerous subsequent cases citing and following the *'Van Allen'* case.

Stated in a practical way, the points involved, in this branch of the present case, are these: While leaving, just as it is, the power of the State to assess for taxation, shares of stock of a National Bank, in the hands of the shareholder, has Congress the power or legislative jurisdiction to so frame its legislation that shares of stock, in the hands of a shareholder, *of a corporation organized under the laws of a State*, shall not be, directly or indirectly, subject to taxation, by the State, to the extent that the capital of such state corporation, is invested in U. S. Bonds or other Securities? If Congress possesses this power, has it so legislated?

Our contention is that Congress has this power; that this is a Federal legislative question which Congress alone can determine; and that Congress, in framing the National Banking Act, and its other legislation, has exercised this power. Its determination of

this Federal legislative question is binding and conclusive on the Courts, including this tribunal.

We will refer a little later on to the wisdom or necessity for Congress establishing such a legislative policy; we are now concerned with the power or jurisdiction of Congress, over this subject.

It will be readily seen that the *Van Allen* case cited *supra* is predicated or based upon the following propositions;

1. The right to tax a private corporation, or its franchises, or property, or its shares of stock, does not exist on the part of a State, if the corporation was organized by Congress as a means or instrumentality of carrying on some operation of the Government, *unless* such right or power to tax is expressly given by act of Congress.

2. The power or jurisdiction, of any State, to assess for taxation, *directly or indirectly* any Federal bonds or Securities, does not exist, unless such right or power to tax is expressly given by Act of Congress.

3. The power or jurisdiction to separate the property of a private corporation, in the capital or capital stock paid in, or that in which the capital is invested, from the property of the shareholder in the shares of stock of such corporation, in the hands of the shareholder, and the power or jurisdiction to assess for taxation these different properties, are *legislative* questions to be determined by the Legislative power, National and State. Congress determines these questions as to private corporations, such as National Banks, organized by Congress as governmental instrumentalities. The State legislature of a particular State, determines these questions as to State private corporations, so far as the State has power and jurisdiction over the franchises or property of such corporations, and the shares of stock issued by such corporations.

The right or power of the State to tax shares of stock in the hands of the individual shareholders, where the capital of the corporations, or part thereof, is invested in Federal securities, is distinctly negatived, in the *Van Allen* case, to the extent of such investment in Federal securities, *except by permission of Congress*, which had been affirmatively granted as to National Banks only in the National Banking Act. This prohibition upon the State's power of taxation rests upon a ground similar to, but entirely separate and distinct from, the prohibition upon its power to tax a means or instrumentality of carrying on the operations of the Federal Goverment, although each arises from the U. S. Constitution.

We state the question, in this case, not involved or decided in the *'Van Allen'* case, as follows: What is the power of Congress

over the taxation of shares of stock of a State corporation, in the hands of the shareholder, where all or part of the capital of such State corporation is invested in U. S. Bonds or other U. S. Securities?

The first of the propositions above enumerated, as to the taxation of an instrumentality of the government, can arise only where the private corporation was organized under an Act of Congress and therefore, does not arise in this case.

The second of these propositions, that the *permission of Congress is necessary to authorize a State to tax Federal securities* is settled law. It falls within the principle of the immunity of the national authority from State taxation, whether it be in the operations of the Government, or the instrumentalities created by the Constitution or by Federal Statutes, or the Securities lawfully issued under the authority of Congress.

Thus, in *Owensboro National Bank vs. Owensboro,* 173 U. S. 668, (43 Law 852), *Mr. Justice White,* speaking for the court, said:

"It follows then necessarily from these conclusions that the re-
" spective States would be *wholly without power* to levy any tax,
" either *direct or indirect,* upon the national banks, their property,
" assets, or franchises, were it not for the *permissive legislation* of
" Congress."

In the first of the Government securities cases, *Weston vs. City Council,* 27 U. S. (2 Pet) 449, (7 Law 481), the city of Charleston imposed a municipal tax on stock of the United States. The case came here, in error, to the Constitutional Court of South Carolina. The opinion of this court, handed down by *Mr. Chief Justice Marshall,* took up the prior case of *McCulloch vs. Maryland,* (4 Wheaton 316), and in relation thereto said:

"We retain the opinions which were then expressed. A con-
" tract made by the government in the exercise of its power, to
" borrow money on the credit of the United States, *is undoubt-*
" *edly independent of the will of any State in which the individ-*
" *ual who lends may reside,* and is undoubtedly an operation es-
" sential to the important objects for which the government was
" created. It ought, therefore, on the principles settled in the case
" of *McCulloch vs. The State of Maryland,* to be exempt from
" State taxation, *and consequently from being taxed by corpor-*
" *ations deriving their power from States.* It is admitted that the
" power of the government to borrow money cannot be directly
" opposed, and that any law directly obstructing its operation would
" be void; but a distinction is taken between direct opposition and
" those measures which may consequentially affect it; that is that a

"law prohibiting loans to the United States would be void, but a "tax on them to any amount is allowable. It is, we think, impos- "sible not to perceive the intimate connection which exists between "these two modes of acting on the subject. (Official Pages 467- "468; Law page 488--left column). The tax on goverment stock "is thought by this court to be a tax on the contract, a tax on the "power to borrow money on the credit of the United States, and "consequently to be repugnant to the Constitution." (Official Page 469; Law Page 488-right column).

The case was reversed on the ground "that the said Constitutional Court adjudged that the said ordinance was not repugnant to the Constitution of the United States; whereas, this court is of the opinion that such repugnancy does exist."

As this case has been uniformly followed by this Court, the principles announced therein are settled law, and do not require the citation of additional authorities.

On the subject of the permission given by Congress for States to tax an instrumentality of the government established by Congress, or to tax Federal securities, this Court has also established the law on those points in its prior decisions.

In the *'Van Allen'* case, 70 U. S. (3 Wall) 573, (18 Law 229), the opinion by *Mr. Justice Nelson*, said:

"It is said that Congress possesses no power to confer upon a "State authority to be exercised which has been exclusively dele- "gated to that body by the Constitution, and consequently, that it "cannot confer upon a State the sovereign right of taxation; nor "is a State competent to receive a grant of any such power from "Congress. We agree to this. But as it respects a subject matter "over which Congress and the States may exercise a concurrent "power, *but from the exercise of which Congress, by reason of "its paramount authority, may exclude the States*, there is no "doubt Congress may withhold the exercise of that authority and "leave the States free to act." (Official page 585; Law page 235- left column).

In *Cleveland Trust Co. vs. Lander*, 184 U. S. 114, (46 Law 458), the opinion, by *Mr. Justice McKenna*, concerning the *'Van Allen'* case said:

"The validity of the statute, (National Banking Act), was "sustained, and, interpreting it, the court said, that it authorized "the taxation of such shares, (in a National Bank), and shares "were defined to be the whole interest of the holders without "diminution on account of the kind of property which consti- "tuted the capital stock of the bank." Official page 114; Law page 458-right column).

The power of Congress is also established, in the *'Van Allen'* case, to differentiate, for purpose of taxation, between the property of *the National Bank* in the capital paid in, or the property in which that capital is invested, and the property rights *of the individual shareholders* in or to the shares of stock in their hands, and to authorize the taxation by the State of these shares in the hands of the shareholders, although the capital was invested, in whole or in part, in U. S. Securities, while maintaining the constitutional exemption from state taxation of the capital of the Bank, as a governmental instrumentality, and also as to such part of the capital as was invested in government Securities.

In other words, the subjects being within the paramount jurisdiction of congress, *the State government could only exercise its taxing powers just so far as Congress permitted, and no further.*

The power of the State for purpose of taxation, to make a similar differentiation between the capital stock owned by the corporation, and the shares of stock owned by the individual shareholders, is also well settled; but there is nothing in any of the cases decided on this point, by this Court, that in any manner limits or restricts the effect of the U. S. Constitution upon, or the power of Congress over, the securities of the United States; or which in any manner extends the powers of the State. legislative or judicial, over such Federal securities, except by permission of Congress. *Cleveland Trust Co. vs. Lander;* 184 U. S. 111 (46 Law 456); *Corry vs. Baltimore;* 196 U. S. 466, (49 Law 556), *Tennessee vs. Whitworth;* 117 U. S. 135, (29 Law 831).

In considering a claim of exemption of shares of stock of a Railway corporation, organized under the laws of Tennessee, this court, in *Tennessee vs. Whitworth,* 117 U. S. 135, 136, (29 Law 831, 832), speaking through *Mr. Chief Justice Waite,* said:

"It is no doubt true that *the legislature* may make a difference, "for the purpose of taxation, between the capital stock of a cor- "poration, and the shares of the same capital stock in the hands of "the individual stockholders. That has often been done, and the "cases are numerous where the exemption of shares from taxation "has been claimed because of a charter exemption of the capital "stock. Notably this was the case with the National Banks. The "capital stock of such banks invested in United States Securities "is not taxable by the States; but shares of the stock in the "hands of the individual stockholders may be taxed with- "out deduction on account of such an investment. This "has been held from the beginning. (Citing cases). The "capital stock in the hands of the bank is exempt, be- "cause invested in securities which are not to be taxed, Rev. "Stat. Sec. 3701, but the shares in the hands of the stockholders

"are by the very terms of the banking act, put, for the purposes "of State taxation, on the same footing as other moneyed capital. "Rev. Stat. Section 5219. This, it was said, *showed the intention "of Congress* to exempt the bank for what was invested in govern- "ment securities, but *to charge the stockholder.*" (Official pages 135-136, Law pages 831-832).

It is clear that the question is purely legislative, resting, in part, as to State corporations, upon the statutes adopted by the State legislature, within its jurisdiction, and, in part, upon the legislation of Congress; while as to Federal instrumentalities or securities, it rests primarily upon permission granted by Congress, followed by State Statutes authorizing an assessment by the State of those taxes which Congress has authorized to be assessed.

But there is no mixing or confusing of these jurisdictions. The State can do nothing of its own power, which will authorize it, directly, or indirectly, to tax Federal securities or instrumentalities. The powers of the State to tax either Federal securities or Federal instrumentalities, must come from the affirmative act of Congress, granting permission so to do.

No Act of Congress is necessary to prohibit or prevent the State from taxing Federal securities or instrumentalities. This prohibition is Constitutional.

In *Lionberger vs. Rowse*, 76 U. S. (9 Wall) 468, (19 Law 701), there were ten State Banks in the State of Missouri, which were required to pay a tax of one per cent upon the amount of capital stock paid in, in full compensation for all taxes of every kind, whatsoever. After the National Banking Act was passed, there was legislation enacted by the State to facilitate the reorganization of these State banks as National banks. Eight of the ten Banks became National Banks, the other two remaining State Banks. Under subsequent legislation, a tax was assessed on one of the reorganized National Banks, equivalent to about two per cent on its paid up capital. It was claimed that this taxation was in violation of the power to tax, given to the State by the National Banking Act.

The opinion of this court, delivered by *Mr. Justice Davis* said:

"Two of them declined the proposition tendered by the State and "are still doing business in St. Louis. There is no way the State "could compel them to relinquish their charters, nor has it the "power to tax their shareholders on their shares of stock. Hav- "ing contracted with these banks to accept from them annually, in "lieu of all taxes, one per cent of their paid in capital stock, it "cannot turn round and assess a tax on the shareholder." (Official Page 477; Law Page 725.)

The State legislature, by its enactments, had, in this case, deprived the State of the right to differentiate the capital stock from the shares in the hands of the shareholders, and to tax each, so far as that was within the power and jurisdiction of the State.

In *Plumber vs. Coler*, 178 U. S. 115, (44 Law 998), *Mr. Justice Shiras*, quoting from *Mr. Chief Justice Fuller* in *Pollock vs. Farmer's Loan & Trust Co.* 157 U. S. 537, (39 Law 763), said:

"As the States cannot tax the powers, the operations or the prop-
" erty of the United States, nor the means which they employ to
" carry their powers into execution, so it has been held that the
" United States have no power under the Constitution to tax either
" the instrumentalities or the property of a State. As then, for the
" reasons advanced and applied in the previous cases, it is not with-
" in the power of a State to tax Federal securities, *it was not nec-*
" *essary for Congress, in order to secure such immunity to declare*
" *in terms, in the Act of July* 14, 1870, *and on the face of the*
" *Bonds issued thereunder, that the principal and interest were ex-*
" *empt from taxation in any form by or under State, municipal or*
" *local authority.* Such a declaration did not operate to withdraw
" from the States any power or right previously possessed, nor to
" create, as between the States and the holders of the bonds, any
" contractual relation. It doubtless may be regarded as *a legitimate*
" *mode of advising purchasers of such bonds of their immunity*
" *from State taxation and of manifesting that Congress did not*
" *intend to waive this immunity*, as it had done in the case of Nat-
" tional Banks, which are admittedly governmental instrument-
" alities." (Official Page 118 Law page 1002. Left Col.)

The National Banking Act must, therefore, be construed precisely the same as if it contained a clause to the effect, that the Constitutional prohibition upon the powers of the State to tax the powers, operations, property, instrumentalities and securities of the United States, continue in full force and effect, except as otherwise expressly provided in this Act.

The rule that it takes affirmative legislative permission, enacted by Congress, to authorize a State to assess a tax, directly or indirectly, upon the securities issued by the United States, and the further rule that it takes legislative action to authorize an assessment for taxation upon the capital or capital stock, as property of the corporation, and upon the shares of the stock in the hands of the shareholders, as property of the shareholders, so far as the capital is invested in Federal securities, as we view it, impel the conclusion, that both of these legislative authorizations and permissions must come from Congress, if the tax is one directly or indirectly upon the securities of the United States. These are legislative questions, of which Congress has exclusive jurisdiction.

No statute enacted by the State legislature, and no decision made by the highest Court of a State can change these from Federal to State questions. nor authoritatively settle the Federal questions involved. The judicial settlement of these Federal questions can be effected only by this Court. Whether or not State taxation is, directly or indirectly, upon the securities of the United States is a Federal judicial question, which can be finally determined only by the authoritative decision of this court.

Undoubtedly, the State Courts have concurrent but subservient jurisdiction with the Federal Courts, to decide all Federal questions properly arising in the cases there pending, and such decisions are conclusive as to the rights of the parties, and establish precedents binding in that jurisdiction until the question is brought here in some proper method, for determination by this Court. But where the particular Federal point is passed upon and decided by this Court, its decision is paramount and conclusive throughout the United States, and is binding upon all courts therein, State and Federal.

It is also true that this Court will extend due courtesy and give due consideration to the decisions of the learned tribunals composing the several highest Courts of the States, and will carefully weigh the grounds upon which the State Courts acted; but this court will form its own judgment and make its own decision as to all Federal questions properly brought here for review, the decision of the State Courts having no binding force upon this Court, where Federal questions are involved.

The opinion of this Court by *Mr. Justice Shiras*, in *Plumbers vs. Coler*, 178 U. S. 115, (44 Law 998), cited *supra*, thus states the relation of the State Courts to this Court:

"We cannot, however, accede to the suggestion in the brief that "the State decisions are entitled to but little consideration, for "the reason that 'they are the determination of a distinct sover- "eignity, adjudicating upon the rights of the nation, and naturally "jealous of their own.' Undoubtedly, in a case like the present, "*the national law is paramount, and its final exposition is for this* "*Court.* Still, for reasons too obvious to require statement, the "decisions of the State Courts, particularly if they are uniform and "concur in their reasonings. are worthy of respectful considera- "tion, even if the question be, at last, a Federal one." (Official page 120; Law page 1002-right col).

This Court has expressed itself many times as to the paramount nature of the Federal Constitution and the Laws of Congress passed in pursuance thereof. In *Northern Securities Co. vs. United States*, 193 U. S., 333, (48 Law 698), this court, speaking through *Mr. Justice Harlan, said*:

"By its very terms the Act regulates only commerce among "the States and with foreign States. Viewed in that light, the Act, "if within the powers of Congress, must be respected; for by the "explicit words of the Constitution, that instrument and the laws "enacted by Congress in pursuance of its provisions, are the Su- "preme law of the land, 'anything in the Constitution or laws of any "State to the contrary notwithstanding,'—supreme over the States, "over the Courts, and even over the people of the United States, "the source of all power under our governmental system,—in re- "spect of the objects for which the National Government was or- "dained. An Act of Congress constitutionally passed under its "power to regulate commerce among the States and with foreign "nations is binding upon all; as much so as if it were embodied "in terms, in the constitution itself. Every judicial officer, whether "of a National or a State Court, is under the obligation of an oath "so to regard a lawful enactment of Congress. Not even a State, "still less one of its artificial creatures, can stand in the way of its "enforcement. If it were otherwise, the government and its laws "might be prostrated at the feet of local authority. *Cohen vs. "Virginia*, 6 Wheaton 264, 385; 5 Law 257, 286, 293. These "views have been often expressed by this Court. And all, we take "it, will agree, as established firmly by the decisions of this Court, "that the power of Congress over commerce extends to all the in- "strumentalities of such commerce, *and to every device* that may "be employed to interfere with the freedom of commerce among "the States and with foreign nations. Equally, we assume, all "will agree that the Constitution and the legal enactments of "Congress are, by express words of the Constitution, the supreme "law of the land, anything in the Constitution and laws of any "State to the contrary notwithstanding." (Official page 344; Law page 703-left col.).

Whether or not the questions are Federal, and, if Federal and properly presented in the case, what the true rules are, are questions for final exposition by this Court. There can be no doubt that whether a State tax is a *direct or indirect tax on Federal Securities* is a Federal question. There can be no pretense of any permission given by Congress to tax shares of stock in State corporations, directly or indirectly, to the extent that the capital of such corporations is invested in United States securities, as the National Banking Act, by its terms, is limited to shares of stock in National banks, and has no application to State corporations, banks or any other kind,—and there is no other Federal Statute on the subject. But, if any claim of permission, given by Congress, is asserted, to tax shares of stock of a State corporation, where the capital is invested in U. S. Securities, whether or not such permission exists is also a Federal question.

The separation for purpose of taxation, of the property in the capital of the corporation from the property in the shares held by individuals, so far as it affects Federal securities, can be made only by or under the authority of Congress; the State has no jurisdiction over this subject matter, except in so far as it derives such authority from permission given by Congress.

In the different views necessarily and properly taken of the relation of a private corporation, as a legal entity, to its corporators and stockholders, the legal principles, that the corporation has a separate existence as an artificial person, and holds legal title to all property belonging to the corporation, while the shareholders hold legal title to the shares of stock, are not always the controlling ones.

For certain purposes of taxation, the relation, is sometimes deemed that of debtor and creditor. *First National Bank, (Albia), vs. City Council*, 86 Iowa, 28 cited *supra*. On the books of the corporation the amount paid in by each shareholder, and each dividend declared on his shares, are carried to his credit on the books of the company, and he is charged in his account with all sums paid to him in connection with his stock and dividends, the relation being treated as that of creditor and debtor. But with this relation, we are not concerned in this division of our brief.

It is undoubtedly true that the original funds contributed by the corporators and stockholders constitute the capital of the corporation. It is the same identical money and property contributed by them and handed over to the corporation which constitute its capital. The corporation had nothing of its own, and contributed nothing of its own. The corporation has no beneficial interest whatever in the property, to which it holds the legal title, nor in any increase thereof by way of profits, nor in any diminution by way of expenses or losses. For many purposes. the corporation is considered as a mere trustee, the stockholders being the real beneficiaries or *cestui que trustent*, holding the equitable interest, while the legal title is in the corporation, as the shareholders are entitled to all gains, suffer all the losses, and are eventually entitled to receive back their original contributions increased or diminished by the gains or losses, remaining on hand, as the case may be. This view is presented in the case of *Bridgman vs. Keokuk*, 72 Iowa, 42, previously cited. See also *Jones vs. Electric Co.*, 144 Fed., 765.

In *Primghar State Bank vs. Rerick*, 96 Iowa, 243, *Robinson J.*, in delivering the opinion, said:

"In the case of *Hubbard vs. Board*, 23 Iowa, 143, a distinction "based upon *Van Allen vs. Assessors*, 3 Wall. 573, between taxing the capital stock and the shares of the capital stock, of a bank, "was recognized but it cannot with any justice be said that in-

" equality of taxation results from taxing the shares separately to " their owners and taxing them collectively to the State bank. " *The aggregate capital of an incorporated bank is virtually owned* " *by its stockholders,* and each share represents a definite part of " the whole. (Citations). Therefore, the aggregate of the taxes " levied upon the separate shares would be the same as those levied " upon the separate shares taken together, or upon the capital stock. " National Banks are not liable for the taxes on the shares of stock " unless they have dividends or other property of the shareholders " which may be used for the payment of the taxes, while State " banks are liable for the taxes without regard to the dividends or " other property owned by the stockholders. But as the capital of " a State bank is really owned by the stockholders, and as it is re- " duced by the amount paid for taxes, its value is reduced by a sum " equal to that paid, and the shareholders, do. in effect, pay the " taxes and equality of taxation to that extent exists under the " two systems." (Pages 243-244).

In *Farrington vs. Tennessee*, 95 U. S. (5 Otto) 679, (24 Law 560,) this court, speaking through *Mr. Justice Swayne*, said:

"The capital stock and the shares of capital stock are distinct " things. The capital stock is the money paid or authorized or " required to be paid in as the basis of the business of the bank, " and the means of conducting its operations. It represents what- " ever it may be invested in. No power to increase or diminish " it belongs inherently to the corporations. *It is a trust fund held* " *by the corporation as a trustee.* It is subject to taxation like other " property. If the bank failed, equity may lay hold of it, administer " it, pay the debt and give the residuum, if there be any, to the " stockholders. If the corporation be dissolved by judgment of law, " equity may interpose and perform the same functions. (Cita- " tions). The shares of the capital stock are usually represented " by certificates. *Every holder is a cestui que trustent to the extent* " *of his ownership.* The shares are held and may be bought and " sold and taxed like other property. Each share represents an " aliquot part of the capital stock. But the holder cannot touch a " dollar of the principal. He is entitled only to share in the divi- " dends and profits. Upon the dissolution of the institution, each " shareholder is entitled to a proportionate share of the residuum " after satisfying all liabilities. The liens of all creditors are prior " to his. The corporation, though holding and owning the capi- " tal stock, cannot vote upon it. It is the right and duty of the " shareholders to vote." (Official pages 686, 687; Law page 560).

In *Northern Securities Co. vs. United States*, 193 U. S. 335, (38 Law 699), the opinion by *Mr. Justice Harlan* recognized, that for

certain purposes, a State corporation acts as a trustee for its own stock holders. It is there said:

"What the government particularly complains of, indeed, all "that it complains of here, is the existence of a combination among "the stockholders of competing railroad companies, which, in vio- "lation of the Act of Congress, restrains interstate and international "commerce *through the agency of a common corporate trustee* "designated to act for both companies in repressing free com- "petition, between them." (Official page 335; Law page 699,—right column).

Has Congress the authority and right to assert the existence of this power over the equitable or beneficial right, title, interest or ownership of Federal securities, and to insist that a taxation, by the State, of the equitable interest owned by the shareholders, or by the beneficiaries of a technical trust, in United States securities, the legal title to which is held by a State corporation or by a technical trustee,—it or he, having, in each case, the only real beneficial interest therein,—is a direct or indirect taxation of the Federal securities, which cannot lawfully be done by the State, without express permission so to do having been first given by Congress? We answer this in the affirmative. Congress has this power. Indeed,—we contend that the Federal Constitution has this effect, without any action on the part of Congress, unless Congress has enacted its affirmative permission authorizing such taxation by the State. In either view the State cannot interfere with the exercise, by Congress, of this paramount authority.

In *Northern Securities Company vs. United States*, 193 U. S. 347, (48 Law 704), the opinion, by *Mr. Justice Harlan*, said:

"In the case just referred to, (*Baltimore & O. R. Co. vs. Mary-* "*land*, 21 Wall 456, 473; 22 Law 678, 684), the Court does not "say, and it is not to be supposed that it will ever say, that any "power exists in a State to prevent the enforcement of a lawful "enactment of Congress, or to invest any of its corporations, in "whatever business engaged, with authority to disregard such en- "actment or defeat its legitimate operation. On the contrary, the "Court has steadily held to the doctrine, vital to the United States "as well as to the States, that a State enactment, even if passed in "the exercise of its acknowledged powers, must yield, in case of "conflict, to the supremacy of the Constitution of the United States "and the Acts of Congress enacted in pursuance of its provisions." (Official page 347, Law page 704).

The right or privilege to own the legal or equitable title or beneficial interest in Federal securities, exempt from State Taxation, is derived from the Federal Constitution and statutes, not from any

State Constitution or statute. Conceding, for the sake of argument, that a State may withhold from its corporations the right to invest any of their capital in Federal securities, a right we much doubt as to moneyed or financial corporations,—the State cannot permit its corporations to invest their capital in Federal securities, and at the same time limit or affect in any manner, directly or indirectly, the immunity from State taxation, with which the Federal Constitution invests such securities, in the absence of permissive legislation by Congress.

The State cannot say that it will permit investments by its corporations in Federal securities, provided that it, the State, reserves the right to tax, to such extent as it pleases, the money about to be invested in Federal securities, or to tax the securities themselves, or to tax the beneficial ownership of such securities, if the legal title thereto is not taken in the name of the purchaser or beneficiary, or to tax the income derived from such securities. If such right to invest at all in Federal securities is given, the right or privilege of immunity or exemption of such securities from State taxation, arising from the U. S. Constitution, is not subject, in the slightest degree, directly or indirectly, to State control, because the right or privilege, giving the exemption from State taxation, comes from the Federal Constitution and statutes, unless Congress says otherwise.

The practical effect can be readily seen. If, for illustration, the tax on the U. S. Bonds, or on the money invested therein or on the beneficial interest in the bonds, or on the income derived therefrom, would be $3,000.00, the same obstruction, arising from the State taxation, would, in each case, be placed upon the purpose and intent of the Federal Constitution and the will of Congress, that these securities should bear no State tax. Such taxation, whether on the bonds, or the beneficial interest therein, or the income therefrom, or the money invested therein, would equally deter investments in Federal securities.

In *Home Insurance Co. vs. Morse,* 87 U. S., (20 Wall. 445). (22 Law 365), the State of Wisconsin enacted a law which required Insurance Companies, as a condition precedent to their right to transact business in that State, to "first appoint an attorney in this State on whom process of law can be served, containing an agreement that such company will not remove the suit for trial into the United States Circuit Court or Federal Court," the appointment and agreement to be executed as provided in the Statute. This statute was, by this court, held invalid, being in violation of the Federal Constitution.

The opinion, by *Mr. Justice Hunt,* clearly recognized the right of a State to prohibit a corporation from entering into the State

to transact the business of the corporation, or the right of the State to impose such conditions on the corporation, as the State saw fit, but said: "The State of Wisconsin can regulate its own corporations and the affairs of its own citizens, *in subordination however, to the Constitution of the United States.*" (Opinion Page 455; Law Page 369). After stating that the right, duly exercised, of a citizen of another State to remove a case to the Federal Court, was an absolute right secured by the Federal Constitution, the opinion further said:

"The statute of Wisconsin is an obstruction to this right; is "repugnant to the Constitution of the United States and the laws "in pursuance thereof, and is illegal and void." (Opinion Page 458; Law Page 370).

The agreement, entered into, in pursuance of the requirements of this State statute, was also held invalid.

In the *'Home Insurance Company'* case, just cited, the power of the State to admit generally, to admit on terms, or to exclude, foreign corporations from entering the State, was a matter solely within the discretion of the State legislature, so long as it acted within its province and jurisdiction; but this power must be so exercised as not to conflict with the Federal Constitution.

So also, the power of the State legislature to differentiate between the ownership of the capital stock and the shares of stock, for purposes of taxation, is equally a matter solely within the discretion of the State legislature, so long as it acts within its province and jurisdiction; but, in this matter also, the power must be so exercised, as not to conflict with the Federal Constitution.

Now as to the wisdom or policy of Congress granting or refusing permission, for the State to tax the beneficial ownership of Federal securities, through the shares of stock, or to allow or forbid, for purposes of State taxation, a separation of the property in the capital stock from the property in the shares of stock in the hands of shareholders, to the extent of the investment of such capital in Federal securities, we present the following propositions.

First: This is purely a Federal legislative question, and its determination is entrusted exclusively to Congress. Whatever determination of the question Congress may make, is binding and conclusive upon the Courts. What effect the Federal Constitution has upon State taxation of U. S. Securities, and what the intention of Congress is, as determined from its statutes, read in the light of the Constitution, are Federal judicial questions; but when the legislative intention is once ascertained, such intention is binding and conclusive upon, and is not open to review by, the Courts.

Second: It is within the power and discretion of Congress to offer one set of privileges or inducements to capitalists to invest their funds in Federal corporations, acting as governmental instrumentalities, whose capital may or shall, in large part or in whole, be invested in Federal securities, while it may offer another set of inducements, by way of exemption from State taxation, to secure the investment in Federal securities of the capital of private corporations organized under State laws. This power must certainly exist; its manner of exercise is a Federal legislative question. The extent to which it has been exercised, is a Federal judicial question, to be determined from the Federal Constitution and U. S. statutes.

In plain English, Congress may give to a Federal Bank the powers and privileges which were in fact given by the National Banking Act, with the burdens therein provided, to secure contributions of capital to such Bank, a large part of which capital must be, and all of which may be, invested in Federal Securities, (these privileges and burdens are carefully enumerated in the *'Van Allen'* case, 70 U. S. 3 Wall 573). But, at the same time, it may give to State corporations, and to the stockholders of such State corporations, immunity from State taxation on the Federal securities in which the corporate capital is invested, such immunity extending to the Federal securities purchased, to the capital so invested, and to the beneficial ownership of such capital and securities, through the shares of stock owned by the individuals who furnished the capital, so far as the capital is invested in Federal securities, and to the income derived from such securities. Whether or not Congress has adopted such a policy is a Federal legislative question, to be ascertained by the Courts.

It must be remembered that the power of the nation to borrow money is necessarily exercised, not only in times of peace and prosperity, when interest is low and money easy to obtain, but also in times of National distress, war and disaster, when rates of interest are high, and money is difficult or almost impossible to obtain.

The National Banking Acts passed in 1863 and 1864, take us back to a time, when, notoriously and literally, the life of the Nation was at stake, and capital proverbially timid was exceedingly loth to invest in United States securities. Congress might well have determined to give certain special privileges with special burdens to National Banks, as was then done, to secure extensive investments in National Securities, and, at the same time, to give to State corporations an exemption of Federal securities from State taxation, both as to the corporations and the shareholders, in order to secure liberal investments of their capital in Federal securities. This,

we claim, was then done, by Congress failing to pass any Act authorizing State taxation of the capital, or of the shares of stock, of State corporations, so far as their capital was invested in Government securities.

It must not be overlooked that from the time of the 'Trent' affair, in the latter part of 1861, when the Confederate Commissioners, Mason & Slidell, were taken from an English ship by a United States war vessel, and until after the surrender of Vicksburg and the victory at Gettysburg, and possibly to a somewhat later date, the Statesmen of this country were compelled to keep constantly in mind the possibility of armed interventions by England and France, together or separately. It is unnecessary to suggest the financial stress which would have followed such action, and the necessity for Congress retaining intact its power of keeping exempt from State taxation, direct or indirect, every form of investment in Federal securities, legal or equitable.

The 'Weston' case shows that the United States Securities involved in that case were bearing 6 or 7 per cent annual interest. The early bonds issued in the war of the Rebellion bore 6 per cent annual interest. Even in the war with a comparatively insignificant power like Spain, in the Act of June 13th, 1898, (2 Supp. U. S. Rev. S., Page 800, Section 33), the bonds issued bore 3 per cent annual intefest, to induce a rapid investment of the money immediately necessary for adequate offensive and defensive purposes.

The financial straits of the war of the Revolution are really no longer pertinent, because there was then no Union under the Constitution. The circumstances creating such financial straits as existed in 1812-15 and 1861-65, will, in all human probability, never recur. But, nevertheless, the United States cannot afford to relax its right to prohibit, or rather its right to refuse to permit, State taxation in any form, direct or indirect, whether of the legal or equitable title to or interest in Federal securities.

With this country holding islands, extending nearly half way across the Atlantic Ocean, and holding other islands extending practically across the Pacific Ocean, and with the initial steps already taken to build and police the Panama canal, the opportunities or possibilities of serious difficulties with the powers of the world are largely increased.

The very greatness of this country makes it practically certain that no one country, single handed, will venture to engage in war with the United States, but for this reason combinations of powers are more probable and easily possible, such as England and Germany, or these added to Japan. Such alliances would compel the

United States to use every financial resource, without hindrance or obstruction from any State. Nor must Mexico be overlooked in such possible combinations. It is within the purview of Statemanship that a combination might arise which would surround us with war on every frontier, by sea and land. Such alliances are, at this time, improbable; but sufficiently within the bonds of possibility to be kept in mind by the Statesmen, National Legislators and Jurists of the United States. Certain phases of this question were carefully considered by this Court in the opinion written by *Mr. Justice Shiras,* handed down in *Plumber vs. Coler,* 178 U. S. 135-137, (44 Law 1008-1009).

It is our contention that a State tax on Federal securities, direct or indirect, whether the title or interest be legal or equitable, is prohibited by the Constitution, and this prohibition can only be waived or suspended by Act of Congress. The permission which Congress may give to a State to tax Federal securities, its nature and extent, are purely Federal legislative questions, and the determination thereof by Congress is conclusive, and not subject to review.

We deem it proper to add that the *'Plumber'* case decided that a State tax on an inheritance of Federal securities, was a tax on the privilege of the deceased to transmit his property to his heirs, devisees and legatees, whether as a testate or intestate, and on the privilege of the heirs and legatees to inherit the same, and such tax was not a tax at all on the Federal securities owned and transmitted by the deceased. As such tax was deducted or had to be paid before the inheritance took effect and before the title was transmitted, *the tax was not a tax on the property,* in the ordinary sense, so as to be a tax on the property of the United States, where the government was the devisee or legatee. *U. S. vs. Perkins,* 163 U. S. 625, 41 Law 287. (Official Page of Plumber case, 129; Law page 1006). So that, in the Plumber case, there was no tax on Federal securities.

If Congress has, as we contend, the power to exempt, or to maintain as exempt, from State taxation, the real equitable or beneficial interest in Federal securities, whether the legal title be in a technical trustee or in a state corporation, whose holding is in the nature of a trustee, the prohibition upon the State to impose such tax, already exists under the Constitution, and affirmative permission of Congress is necessary to authorize the State to impose such tax.

One other element is suggested in the opening phrase of the opinion of this Court, speaking through *Mr. Justice McKenna,* in the case of *Cleveland Trust Company vs. Lander, Treasurer,* 184 U. S. 111, 113, (46 Law 458), which says:

"The argument of the plaintiff in error claims a greater im-
"munity from taxation for the shares of the trust company than
"Section 5219 of the Revised Statutes gives to shares in National
"Banks".

If our contention is correct, to the effect, that permission must be given by Congress, for a State to tax Federal securities, directly or indirectly, whether the title thereto be legal or equitable, then the question resolves itself into a purely legislative one, within the exclusive jurisdiction of Congress. When this Court has established the legal effect of the Congressional statutes in the light of the Constitution, it must be conclusively presumed that such legal result was what Congress intended to bring about, and its intention, when so ascertained, as to a matter within its province, is final and conclusive.

It must not be overlooked, that Congress, in the National Banking Act, had no intention of tying its own hands, or establishing any limitation upon itself. It was establishing a limited relaxation of the prohibition upon the taxing powers of the State over a Federal instrumentality, and over Federal securities, leaving the exemption from State taxation in full force, except, in so far as permission for the State to tax was affirmatively given by Congress. The prohibition upon State taxation continued in full force and unimpaired, except in so far as it was relaxed by the affirmative action of Congress. The prohibition is thus maintained, except as to shares of stock of National Banks, and as to these there is a limitation that the taxation upon such shares of stock which the State may impose, "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." (Rev. S. U. S. 5219).

The taxation here prohibited is a greater rate imposed by State legislation, not any difference in the rate of State taxation which may arise under the U. S. Constitution or the laws of Congress because of the qualified permission given by Congress for the State to tax shares of stock in a National Bank, and of its refusal to permit the State to tax shares of stock in a State corporation, where the capital of each corporation, Federal or State, is, in whole or in part, invested in Federal securities, to the extent of such investment.

There is not one syllable, in any U. S. Statute which relaxes or relinquishes, to any extent, the immunity from taxation of shares of stock in a State corporation, whose capital is wholly or partly invested in Federal securities, to the extent of such investment.

We assume it to be settled law, that the difference in the rate of State taxation prohibited by the National Banking Act may arise from extensive exemptions of other moneyed capital from State

taxation, under State Statutes. *Boyer vs. Boyer*, 116 U. S. 689 (28 Law 1089). ***But this rule has no application to an exemption of certain shares of stock from State taxation, arising from the prohibition against State taxation contained in the Federal Constitution and Federal statutes,*** while the subjection to State taxation of other shares of stock arises from the permission to tax, given to the State by the Federal statutes. If the inequality of the tax arises from Federal law, Constitutional or statutory, it is not affected or prohibited by R. S. U. S. Section 5219.

If the rate of State taxation upon so much of the shares of a National Bank as are placed by Congress within its taxing power, is not greater than the rate of taxation upon so much of the shares of a State corporation which Congress has placed or left within the State taxing power, the balance being withheld, from taxation by Congress refusing to grant permission to tax the same, there is certainly no violation of this Section 5219, although the National Bank may have greater valuation subject to taxation than the State Bank would have as result of such Congressional legislation.

In other words, if the whole, or any part, of the shares of stock of a State corporation *is withdrawn from taxation by the Federal*

(Insert of Brief at Page 44, preceding Division 5).

With reference to the phrases in Rev. S. U. S. Section 5219, "that the taxation shall not be at a greater rate than is assessed "upon other moneyed capital in the hands of individual citizens "of such State," in *Mercantile National Bank vs. New York City*, 121 U. S. 138, (30 Law 895), the opinion, by *Mr. Justice Mathews*, said: "that upon a true construction of this clause of the "Act, the meaning and intent of the law makers were that the rate "of taxation of the shares should be the same, or not greater than, "upon the moneyed capital of the individual citizen, which is sub-"ject or liable to taxation." (Opinion, Page 149, Law Page 899, right column). This must certainly be limited to that taxation which the State may impose, *ex proprio vigore*, without permission of Congress, or to that taxation which the State may impose under and by virtue of such permission, if any, as Congress may have given.

The opinion also said that the words of the law "do not embrace "any moneyed capital in the sense just defined, (in competition "with National Banks), *except that in the hands of individual cit-"izens.* This excludes moneyed capital in the hands of corpora-"tions, although the business of some corporations may be such as "to make the shares therein, belonging to the individuals moneyed "capital in their hands as in the case of banks". (Opinion, Page

taxation, under State Statues. *Boyer vs. Boyer*, 116 U. S. (28 Law 1089). *But this rule has no application to an exemp of certain shares of stock from State taxation, arising from prohibition against State taxation contained in the Federal C stitution and Federal statutes,* while the subjection to State taxat of other shares of stock arises from the permission to tax, gr to the State by the Federal statutes. If the inequality of the t arises from Federal law, Constitutional or statutory, it is not fected or prohibited by R. S. U. S. Section 5219.

If the rate of State taxation upon so much of the shares of National Bank as are placed by Congress within its taxing pow is not greater than the rate of taxation upon so much of the sha of a State corporation which Congress has placed or left wit the State taxing power, the balance being withheld, from taxati by Congress refusing to grant permission to tax the same, there certainly no violation of this Section 5219, although the Natio Bank may have greater valuation subject to taxation than the St Bank would have as result of such Congressional legislation.

In other words, if the whole, or any part, of the shares of sto of a State corporation *is withdrawn from taxation by the Fede Constitution or Federal statutes,* this is not a violation of R. S. U S. Sec. 5219; but if the whole, or such material part of the sha of stock of State corporations, as would bring the ca within the rule of *Boyer vs. Boyer, supra, is withdrawn from tax tion by State Laws,* then there is a violation of said Section 521

Division 5

The statutes of Iowa, under consideration, are in contraventi of the provisions of the XIVth amendment to the constitution of t United States, concerning due process of law, and equal protecti of the laws.

The contentions of plaintiff in error, on this branch of the ca are as follows:

Third: The assessment, by the State of Iowa, or by its mu cipal subdivision, of a tax against a private corporation, cluding plaintiff in error, based upon the value of the shares of sto in the hands of the individual shareholders, and making the co poration *primarily liable* for the payment of such tax, and co pelling the corporation to pay such tax *from its own funds,* with giving to the corporation a right of full recoupment of the tax paid, from the funds of the shareholder which may be in custody, or which may subsequently be received by the corp ation, where no other property of the shareholder is, at any ti

in the possession or custody or under the control of the corporation, and without giving to the corporation the right to retain sufficient of said funds of the shareholder to make full recoupment therefrom to said corporation, is a taking of the property of the corporation *to pay the debt or obligation of another*, and constitutes a taking of the property of the corporation without compensation, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution,

Fourth: The assessment, by the State of Iowa, or its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of shares of stock in the hands of the individual shareholder, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax *from its own funds*, merely giving to the corporation, at its own expense, the right to sue each of the numerous shareholders in separate, personal actions, to recover the tax so paid or, at its own expense, to enforce a lien created upon the shares of stock taxed belonging to each individual shareholder, by a sale of the said share of each for the amounts of the tax so paid, with the alternative of losing the amounts paid by said corporation to discharge the tax on the shares, is a taking of the property of the corporation *without compensation*, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution.

Fifth: The failure or refusal of the laws of the State of Iowa to grant to State Banks, *Savings Banks*, (of which plaintiff in error is one), and Loan & Trust Companies, organized under the laws of that State, the right to retain and recoup the corporation, from funds or property of each individual shareholder, to the extent of taxes assessed upon the shares of stock held by each shareholder, which have been paid by the corporation, while granting such right of retention and recoupment *as to National Banks, and as to all corporations organized under the laws of said State, other than the corporations first above named, is a denial to Savings Banks*, and to plaintiff in error, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

Sixth: Compelling a part of the corporations, organized under the laws of the State of Iowa, to become *primarily liable*, as agents, to the State, or its taxing subdivisions, for the payment of the taxes assessed upon the shares of stock of said corporation owned by the individual shareholder, the real principals, *while making other agents*, to whom the property of their principals is assessed, liable for the payment of the tax assessed, *only to the extent of the money*, funds or property of each principal in the possession of

such agent, said tax to be paid out of said money or funds or the proceeds of said property, of the principals, is a denial to the corporations, first above described, of the equal protection of the laws in contravention of the XIVth Amendment to the U. S. Constitution.

It is necessary to refer to parts, or all of Sections 1320, 1322, 1323, and 1325 of the Code of Iowa of 1897. We, therefore, repeat here or set out the Sections or parts of Sections referred to, as follows:—

"*Section* 1320. Any person *acting as the agent* of another, *and* "*having in his possession or under his control or management* any "money, notes and credits, or personal property belonging to such "other person, with a view to investing or loaning or in any other "manner using or holding the same for pecuniary profit for him- "self or the owner, shall be required to list the same at the real "value, and such agent shall be personally liable for the tax on the "same; and if he refuses to render the list or to swear to the same, "the amount of such money, property, notes or credits may be "listed and valued according to the best knowledge and judgment "of the assessor.

"*Section* 1322: Shares of stock of *National Banks* shall be "assessed *to the individual stockholders* at the place where the bank "is located. Shares of stock of State and *Savings banks* and "Loan and Trust companies shall be assessed *to such Banks* and "Loan and Trust Companies, *and not to the individual share-* *holders.* * *

"*Section* 1323: The shares of stock of any corporation or- "ganized under the laws of this state, except those which are not "organized for pecuniary profit, *and except corporations otherwise* "*provided for in this act, shall be assessed to the owners thereof,* "at the place where its principal business is transacted, the assess- "ment to be on the value of such shares on the first day of January "in each year. * *

"*Section* 1325. The corporations described in the preceding "sections *shall be liable for the payment of the taxes assessed to* "*the stockholders of such corporations* and such tax shall be pay- "able by the corporation in the same manner and under the same "penalties as in case of taxes due from an individual tax-payer, "and may be collected in the same manner as their taxes, or by "action in the name of the county.

"*Such corporations may recover* from each stockholder his pro- "portion of the taxes so paid, *and shall have a lien on his stock* "*and unpaid dividends thereof.* If the unpaid dividends are not "sufficient to pay such tax, the corporation may enforce such lien

"on the stock by public sale of the same, to be made by the sheriff "at the principal office of such corporation in this State, after "giving the stockholders thirty days notice of the amount of such "tax and the time and place of sale, such notices to be by regis- "tered letter addressed to the stockholder at his post-office ad- "dress, as the same appears upon the books of the company, or is "known by its Secretary."

We will first state certain propositions of law, in relation to the matters under consideration, which have been settled by prior decisions of this Court. They are as follows:—

(a) A State may, for purposes of taxation, fix, within the territorial limits of said State, the *situs* of shares of stock owned by the individual shareholder, in a private corporation, organized under the laws of the taxing State, whether such shareholder resides within or without said State, where the right so to do is reserved in the charter, or in the general laws of said State in force at the time the corporation was created, or where the right to alter, amend or repeal the charter is reserved in the Constitution of the State organizing the corporation. *Corry vs. Baltimore*; 196 U. S. 477, 478, (49 Law 562).

While no such right is reserved in the Articles of Incorporation of plaintiff in error, or in the Chapter of the Code of Iowa, under which plaintiff in error was organized, such right is, doubtless, sufficiently reserved in Article 8—Section 12, of the Constitution of Iowa, and in the Code of Iowa of 1897, Section 1619, which is a substantial re-enactment of Code of Iowa of 1873, Section 1090.

At any rate, in this case, we do not question the right of the State of Iowa, for purposes of taxation, to fix, within the territorial limits of that State, the taxing *situs* of the shares of stock owned by the individual shareholder, whether resident within or witout that State.

(b) A State, without jurisdiction, cannot assess a tax so as to prevent its act being a taking of property without due process of law. A state cannot assess to any person, natural or artificial, a tax based solely upon the ownership of property, *where the person assessed does not own the same*, and has no right, title or interest therein. Such attempted exercise of the taxing powers is a taking of property without due process of law, in contravention of the 14th Amendment to the U. S. Constitution.

Delaware Ry. Co. vs. Pennsylvania, 198 U. S. 341, 358, (49 Law 1084);

U. S. vs. Baltimore & Ohio R. R. Co., 84 U. S. (17 Wall) 322, (21 Law 597);

Bonds

Foreign Held Banks, (*Cleveland Ry. Co. vs. Pennsylvania*) 82 U. S. (15 Wall) 300, (21 Law 179);

The assessment for taxation, in this case, *cannot be sustained on the ground of ownership*, by plaintiff in error, of the shares of stock assessed, because the same were the property of the individual shareholders, and plaintiff in error had no ownership, right, title or interest therein or thereto.

(c) Property in the possession or custody, or under the control of a resident agent, at the date, on, or as of, which the assessment is made, may be assessed to such agent, as if he were the owner thereof, *the tax being payable out of the property taxed.*

New Orleans vs. Stempel, 175 U. S. 309, (46 Law 949); *Walker vs. Jack*, 88 Fed. (6th C. Ct.) 576; Code of Iowa of 1897, Section 1320. *Hershire v. First National Bank*, 35 Iowa 272.

The assessment for taxation, in this case, *cannot be sustained upon the ground of an agent in possession* of the property assessed, as there is no pretense or claim that plaintiff in error, at any time, was in the possession or custody of the shares of stock assessed, or of the certificates thereof, owned by the individual shareholders, or that the same were at any time, after the shareholders became the owners thereof, under the control of the corporation. An assessment of said shares of stock to plaintiff in error, based solely upon this ground, would be a taking of the property of plaintiff in error, without due process of law.

(d) A private corporation may be required by a State statute, in the nature of a garnishment proceeding, to hold and pay over to the State, or to a municipal subdivision thereof, the funds or property of the individual shareholder, in the possession of the corporation when the tax becomes due and payable, or which may come into its possession after the tax becomes due and payable, in discharge of a tax assessed upon or against shares of stock of said corporation, in the hands of the individual shareholder, when the amount so required to be paid as a tax, does not exceed the sum or value of the funds or property of the shareholder held by the corporation. But the statute must give to the corporation the authority or right to withhold and pay over said funds or property. The authorities cited *infra*, in subdivision "E", sustain the foregoing proposition.

Perhaps the State may have the power to require the corporation to hold funds or property of the shareholder in its possesion or custody on the date of the assessment, or which come into its possession between the assessment and the date when the tax becomes due and payable, but the statutory authority for so doing must be clear and explicit.

The liability of the corporation, in effect, as a garnishee, to pay a tax assessed upon or against the shares of stock in the hands of the individual stockholder, is limited to the extent of the funds, or property of the shareholder *in the possession* or custody or under the control of the corporation.

If the Statute goes beyond this, and requires the corporation to pay such tax upon the shareholder's shares, in whole or in part, *out of its own funds*, then the tax, to that extent, would be one primarily upon the corporation itself, and not upon the shareholder.

In that case, such excess would be a taking of the property of the corporation without due process of law. In the same case, in event of the capital stock of the corporation being invested, in whole or in part, in U. S. Securities, the assessment would, in effect, be a tax upon such securities, so far as the tax was assessed upon the capital invested in said Federal Securities.

There is no basis or ground, in the record, for any claim that plaintiff in error ever had in its possession or custody, or under its control, any property of any individual shareholder, as distinguished from the money or funds of said shareholder, from the proceeds of which property the tax levied on the assessment in question could have been paid by the Bank. We, therefore, shall not make any further reference to the property of the shareholder, other than funds or money.

(e) The State may require a private corporation to act *as agent for the State* in collecting, or as *agent for the shareholder* in paying, or as *agent for both* in collecting and paying, from the funds, and perhaps from the property of the shareholder, the amount of a tax assessed upon or against the shares of stock owned by said shareholder, and to pay said tax from the funds of said shareholder, and perhaps from the proceeds of his property, which may be in, or come into, the possession or custody, or under the control of the corporation, at or after the time the tax becomes due and payable to the State, or to a municipal subdivision thereof. Perhaps the State may exercise this power as to money or property held by the corporation on or after the date of the assessment, but before the tax comes due and payable, if the authority so to do is clear and explicit. But the statute must give to the corporation the authority or right to withhold, convert when necessary, and pay over said funds or property.

Corry vs. Baltimore; 196 U. S. 475, 476, (49 Law 561).
First National vs. Kentucky; 76 U. S. (9 Wall) 353, 360; (19 Law 701).
Lionberger vs. Rowse; 76 U. S. (9 Wall) 468, 477; 19 Law 725.)

United States vs. Baltimore Ry Co. 84 U. S. (17 Wall) 322; (21 Law 597).
Bell's Gap Ry. Co. vs. Pennsylvania; 134 U. S. 232, (33 Law 892, 896).
Merchant's National Bank vs. Pennsylvania; 167 U. S. 461, 465 (42 Law 238).
Hershire vs. First National Bank; 35 Iowa 272.

As already stated, there is no basis or ground, in the record, for any claim that plaintiff in error ever had in its possession or custody, or under its control, any property of any individual shareholder, as distinguished from the money or funds of said shareholder, from the proceeds of which property, the tax levied on the assessment in question could have been paid by the bank. We, therefore, shall not make any further reference to the property of the shareholder, other than funds or money.

Besides the settled propositions of law above stated, some other points may be conceded, as follows:—

(f) It may be conceded that the State has power to establish for its own benefit, and to enforce a lien upon the shares of stock, owned by the individual shareholder, to secure the payment of a tax levied by the State, or a municipal subdivision thereof, upon such shares, and may establish, by proper proceedings, a method for selling such shares, so far as necessary, to pay such taxes; but we distinctly deny the right or power of the State to *compel the corporation to pay said tax from its own funds*, and then to expend large sums of money, frequently much larger than the tax assessed, by way of counsel fees and other necessary expenses of litigation, in an attempt by the corporation to recoup itself for the money advanced as taxes to the State, with the alternative of losing the tax so paid, if unwilling to embark upon or engage in such litigation;

Such compulsory expenditure of the corporate funds, for the sole and exclusive benefit of the State, constitutes a taking of the property of the corporation, by the State, without compensation and without due process of law.

(g) It may be further conceded, that the State may give to a corporation a right to recoup itself, by action, for any sums voluntarily paid by the corporation, as agent for the State, upon taxes levied by or under the authority of the State, upon or against the shares of stock in said corporation held by the individual shareholder, and that the shareholder may be held liable in an action brought by the corporation, under statutory authority, to recover from the shareholder the taxes duly assessed, and so paid

by the corporation. *Corry vs. Baltimore;* 196 U. S. 475, 476, (49 Law 561).

But we deny the right or power of the State to compel the corporation to pay said tax, *from its own funds,* and then to expend large sums of money, frequently much larger than the tax assessed, by way of counsel fees and other necessary expenses of litigation, in an attempt by the corporation to recoup itself for the funds advanced to the State as taxes, with the alternative of losing the tax so paid, if unwilling to embark upon or engage in such litigation. Such compulsory expenditure of the corporate funds was for the sole and exclusive benefit of the State, and constitutes a taking of the property of the corporation, by the State, without compensation and without due process of law.

Due Process of law: In a prior subdivision of this brief, (Division 3), we have referred to Code Sections, 1322, 1323 and 1325, quoted near the commencement of this division of our brief, stating our contention that the shares of stock in State Banks, Savings Banks and in Loan & Trust Companies, *are to be assessed to the corporations,* and not to the individual shareholders.

But no right of recoupment or of recovery *by a Savings Bank,* from the shareholder, is given to the Savings Bank for the taxes assessed on the shares belonging to such shareholder, which have been paid by the Savings Bank. No right is given to the Savings Bank to sue for and recover the taxes so paid by the Bank; nor is any lien created by such statute, in favor of the Savings Bank, on the shares of stock or other property belonging to the shareholder, for the amount of the taxes on such shares paid by the Bank.

The right to withhold dividends, the right to a lien on the shares of stock and the enforcement of such lien, and the right to sue the shareholder for the taxes paid, is limited, by the Statute, *to taxes paid by the corporation upon the shares of stock which, under the Statutes, are assessed to the individual shareholders,* but not to the taxes on shares of stock assessed to the corporation, and not assessed to individual shareholders. These rights, of recoupment, recovery and lien, have no application to the assessments for taxation of shares of stock to the corporation itself, and not to the individual shareholder.

This is, in effect, an assessment upon the Bank itself, not upon the shareholder or upon his shares of stock, and is a taking of the property of the bank without due process of law.

It is clear from the record, that no property of the shareholder, other than dividends, was ever in the bank's possession or custody, or under its control, after the certificates for the shares of the stock were delivered to the several shareholders.

The tax in question was assessed in April 1902; it was placed on the tax list by the county Auditor during the year 1902, and this tax list was delivered by said Auditor to the County Treasurer on the first day of January, 1903, at which time the taxes assessed for 1902, became due and payable. There was an interval of about nine months between the date of the actual assessment and the date when the tax became due and payable, but as the assessment was made upon the value of the shares as owned on January 1st, 1902, there was in reality, a full year between the date as of which the assessment was made, and the date of the maturity of the tax.

Assuming, that a Statute would be valid and constitutional which authorized the Savings Bank to withhold from the shareholder, to apply upon the tax to be assessed upon his shares, when it became due, any money or funds belonging to the shareholder in the possession of the Bank at the date of the assessment, or which might come into its possession after the assessment and before the maturity of the tax, *there is no such statute.* In the absence of such statute, a Savings Bank could not legally withhold any such funds to which the shareholder was entitled.

As to funds belonging to a shareholder which might come into its possession at or after the maturity of the tax, there is again no right or authority given by Statute to the Savings Bank to withhold or apply such funds in payment of the tax.

But the assessment was made in April 1902, the action of the local board of Review, in reviewing and affirming the assessment complained of, was required by law to be completed prior to May first, 1902, (Code of Iowa of 1897, Section 1370), and was in fact, completed prior to the adjournment of that Board, *sine die,* on April 29th, 1902. (Trans. 17-Lines 3-5).

The affirmance of the assessment relates back to the date of the assessment. The action of the District and Supreme Courts of the State was founded upon the situation and facts existing on January 1st, 1902, as established by the evidence, and their respective affirmances of the assessment made, related back to the date of the assessment.

Under the sections of the Code of Iowa, previously cited, (Division 3) concerning the rights and duties of the person assessed and the powers and duties of the local Board of Review, the person aggrieved must make his complaint before that Board or be barred of relief.

At the time when the assessment was made, and also at the time when the local Board of Review acted upon the complaint made by plaintiff in error, concerning the Assessment in question,

there was no money or property belonging to the shareholders which it could legally withhold to meet the tax, and there was no certainty that plaintiff in error ever would have any money or property in its possession belonging to the shareholder, available for this purpose, after the tax became due. That was contingent upon future events and transactions which were unknown and unknowable. There was no right or authority, under the Statute, for a Savings Bank to withhold the funds if any, belonging to the shareholders received after the tax matured, and to apply them on the tax.

The tax, in form and in legal effect, is upon the Savings Bank, placing upon the Bank the *absolute liability* for payment of the tax, whether or not it ever receives any recoupment, in whole, or in part, of the tax so paid for the benefit of the shareholder; nor is there any provision in favor of the Savings Bank, limiting its obligation to the paying over of such funds only, the property of the shareholder, as it may receive.

The tax is not assessed upon property belonging to the Savings Bank, although the liability of the bank to pay the same *is unconditional and absolute*. The tax is claimed to be assessed upon the shares of stock belonging to the shareholder, but the tax is assessed *against the Savings Bank, and creates an absolute liability on the part of said Bank* for its payment, without regard to whether or not it ever will have in its possession any means of the shareholder, and without giving any right of recoupment to the Savings Bank.

It is our contention that an agent made liable for the payment of a tax, on the property of his principal, cannot, under the Federal Constitution, be made liable in excess of the funds or property of the principal in his possession, or which may come into his possession, nor unless he is given statutory authority to withhold from his principal sufficient of the principals' funds or property, with which to pay the tax assessed, and to apply the same in payment of the tax; and that any statute which does not thus protect the agent, but makes him absolutely liable in excess of any money or property of the principal he may have or receive, is, in whole or in part, taking of the property of the agent without due process of law.

The Iowa Statutes under consideration are, in these respects, in contravention of the 14th Amendment to the Constitution of the U. S. concerning due process of law.

We have already, called attention to the decisions of the Supreme Court of Iowa, on the subject of the deduction of the just debts of a shareholder of a private corporation from his shares of

stock, considered as credits, when listing them for taxation, and we have shown that the case of *First National Bank of Albia vs. City Council,* 86 Iowa, 28, and the other Iowa cases cited, harmonize with the holdings, on this subject, of the Federal Courts.

If it be held that a shareholder may deduct his just debts from his shares of stock, as credits, when listing them for taxation, then the Iowa Statutes under consideration require the Savings Bank absolutely to pay taxes *upon the full amount of the shares,* without any possibility of such deduction being made, and leave the Savings Banks without any possibility of recoupment for taxes so paid, as the shareholder could not be compelled to refund to the Bank *any more than could have been properly assessed against him,* if he had listed his own property for taxation.

It is settled law that no notice of the assessment upon shares of stock need be given to the shareholder, nor is it necessary that the shareholder be given an opportunity to contest the correctness of the assessment and valuation, because the corporation may, by Statute, be constituted the agent of the stockholder for these purposes. *Corry vs. Baltimore;* 196 U. S. 478, (49 Law 562).

Assuming, that the legal effect of the statutes of Iowa is to constitute the corporation as the agent of the shareholder to protect his interests in relation to the assessment of the shares for taxation, the record shows that one of the grounds of the motion for decree made by plaintiff in error, before the State District Court, was as follows:

"If the tax shall be regarded as levied upon the property of "the shareholders and paid by them, then and in that case, the "shareholder is deprived of the right to offset his indebtedness, "granted him under the general laws of the State. (Trans. 18-"lines 3-6)."

As to the Savings Bank itself, the claim was made that the assessment was without due process of law. The corporation as agent cannot be required to pay any sum in excess of what it could recoup from its principal, the shareholder, except by a law which deprives it of its property without due process of law.

In *First National Bank vs Kentucky,* 76 U. S. (9 Wall 353, (19 Law 701), the opinion, by *Mr. Justice Miller,* said, that the State of Kentucky had imposed a tax "on bank stock" of fifty cents on each share thereof, equal to $100 of stock therein owned by individuals, corporations or societies." (Official page 354; Law page 703).

The fourth defense set up by the National Bank, the plaintiff in error and original defendant, was: "That the shares of the

stock are the property of the individual shareholders, and that the Bank cannot be made responsible for a tax levied on those shares, and cannot be compelled to collect and pay such tax to the State." (Official Page 355; Law Page 702.)

In relation to this defense, the opinion said:

"If the State of Kentucky had a claim against a stockholder of "the bank who was a non-resident of the State, *it could, undoubt-"edly, collect the claim* by legal proceeding, in which *the bank "could be attached or garnisheed, and made to pay the debt out "of the means of its shareholder under its control. This is, in "effect, what the law of Kentucky does in regard to the tax of "the State on the bank shares.* It is no greater interference with "the functions of the Bank, than any other legal proceedings to "which its business operations may subject it, and it in no manner "hinders it from performing all the duties of financial agent of "the government." (Official page 362-363; Law pages 703-704).

The principle or analogy relied upon in the case cited *supra*, (*First National Bank vs. Kentucky*), is that of garnishee process, or, as it is sometimes called, trustee process, where the limit of the liability of the garnishee or trustee is the property or means of his creditor in his possession or custody, or under his control, which is sought to be subjected to the payment of a debt, owing by the creditor of the garnishee, to the plaintiff. Any liability of the garnishee or trustee in excess of the property or means of his creditor in the hands of the garnishee or trustee, would create a primary liability on the part of the garnishee or trustee to pay the debt of another, and would be a taking of the property or means of such garnishee or trustee without due process of law.

The case of *Lionberger vs. Rowse*, 76 U. S. 468, (19 Law 721) previously cited, is based upon the previous case of *First National Bank vs. Kentucky*, 76 U. S. 353, which it cites and follows, without restating the principles involved. (Official page 477; Law page 725).

In *United States vs. Baltimore & Ohio Ry. Co.*, 84 U. S (17 Wall) 322, (21 Law 497), the United States claimed taxes in the sum of $87,000, assessed upon certain interest payable to the City of Baltimore, which taxes were assessed under Section 122 of the Internal Revenue Act of Congress, passed in 1862, as amended in 1864. The City of Baltimore had issued corporate bonds in the sum of $5,000,000: The proceeds thereof, less a sinking fund, were paid to the Railroad Company, to induce and enable the Company to build its railroad into said City. To indemnify said city against loss, and to secure the payment by the Railroad company of the interest and principal of said bonds, said Rail-

road Company executed a mortgage to the city upon its road and franchise. (Official pages 323, 324; Law Pages 598, 600).

The opinion, delivered by *Mr. Justice Hunt*, held that the Railroad Company was merely the agent to collect and pay over the taxes to the U. S.; that the City was the party really paying the tax by its being deducted from the interest payable to the city; that the purpose of the issuance of the $5,000,000 of bonds was governmental, and 'within the range of the municipal duties of the city, and that the tax cannot be collected.'

Upon the question of the agency of the Railroad company to collect and pay over the taxes to the United States, the opinion referred to the prior case of *Haight vs R. R. Co.*, 73 U. S. (6 Wall) 17, (18 Law 819), in which case the opinion was written by *Mr. Justice Grier*, and said:

"This is a clear, distinct and unqualified adjudication, by the "unanimous judgment of this Court, that the tax imposed by the "122nd section is a tax imposed upon the creditor or stockholder "therein named; that the tax is not upon the corporation, and that "the corporation *is made use of as a convenient and effective in-"strument for collecting the same.* It is a sequence in logical "connection with that provision of section 117, which specifies, as "the subject of individual taxation all the earnings, profits, gains "and income, from whatever source derived, and whether divided "or not, except the amount derived from the sources indicated in "the 122nd section. Of the incomes specified in section 117, the "individual must make specific returns, and be directly taxed "thereon. Upon or for the incomes received from the sources "mentioned in section 122 no tax is directly imposed upon the "owner. *That tax is to be returned by, and collected from the cor-"porations as his agent and instrument.* (Official page 326; Law "page 599).

"A tax is understood to be a charge, a pecuniary burden, for the "support of Government. Of all burdens imposed upon mankind "that of grinding taxation is the most cruel. *It is not taxation "that government should take from one the profits and gains of "another.* That is taxation which compels one to pay for the sup-"port of the Government from his own gains and of his own prop-"erty." (Official page 326; Law page 599).

"In the cases we are considering the corporation parts not with "a farthing of its own property. Whatever sum it pays to the "Government is the property of another. Whether the tax is "five per cent on the dividend or interest, or whether it be fifty "per cent, the corporation is neither richer nor poorer. What-"ever it thus pays to the Government, it by law withholds from the

"creditors. If no tax exists, it pays seven per cent, or whatever "be its rate of interest, to its creditor in one unbroken sum. If "there be a tax it pays exactly the same sum to its creditor, less "five per cent thereof, and this five per cent it pays to the Gov- "ernment. The receivers may be two, or the receiver may be "one, but the payer pays the same amount in either event. It "is no pecuniary burden upon the corporation, and no taxation "of the corporation. The burden falls on the creditor. He is "the party taxed." (Official page 326; Law page 599).

In the foregoing case, (*U. S. vs. B. & O. R. R. Co.*), the interest was to be paid in sums certain, payable at different dates, certain. Unless the Railway company became insolvent, and the security insufficient, the corporation must owe these Sums, and would have them in its possession; it could deduct the five per centum due to the Government from the funds of the creditors which it held, and pay them over to the Government. It was again, in the nature of a garnishment proceeding. There was no attempt to make the corporation *primarily liable* for this tax, in case there was no money or property, or there was insufficient money or property, belonging to the creditor of the corporation in the possession of the corporation, with which to pay the tax.

In *Bell's Gap R. R. vs. Pennsylvania*, 134 U. S. 232, (33 Law 892), the law of Pennsylvania provided that 'bonds and other securities issued by corporation' should be taxed at three mills on the dollar of the nominal or par value thereof. An account was made up, under protest, of the amount of this tax upon all scrip, bonds and certificates of indebtedness of plaintiff in error, the Railway company, owned by residents of Pennsylvania, upon which the State sought to collect said tax. The Railroad company tendered an appeal, which carried the case to the Court of Common Pleas of Dauphin County, where it was tried and decided in favor of the company. The State carried the case, in error, to the Supreme Court of Pennsylvania, which reversed the case. Plaintiff in error then carried the case, in error, to this Court, which affirmed the judgment of the State Supreme Court. Some of the principal claims made were, *that the company was taxed for property it did not own;* that the tax was in violation of the XIVth Amendment; and was also void as impairing the obligation of the company's contract with its creditors.

The opinion, delivered by *Mr. Justice Bradley*, said:

"The presumption is that corporate securities are worth their "face value. Besides, the person that holds them is not affected "by the tax unless he received his interest from which the tax "is deducted. *So long as the interest is paid the security has to*

" *him full productive value; when it is not paid he pays no tax.*"
" (Official page 236 ; Law page 134-left col.). "3. *That the*
" *corporation is taxed for property it does not own.* This objec-
" tion is not true in point of fact. The corporation as the debtor
" of its bondholders, *holding money in its hands* for their use,
" namely, the interest to be paid, *is merely required to pay* to the
" commonwealth *out of this fund* the proper tax due on the sec-
" urity. *The tax is on the bondholder, not on the corporation.*
" This plan is adopted as *a matter of convenience, and as a se-*
" *cure method of collecting the tax.* That is all. It injures no
" party. It certainly does not infringe the constitution of the
" United States by making one party pay the debts and support
" the just burdens of another party, as is implied in the objection."
(Official page 239 ; Law page 896).

In the *Bell's Gap R. R. Co.* case, just cited, there was again, no primary liability imposed upon the Railroad Company to pay the tax assessed, without regard to the money or property of the person liable for the tax, in the possession or custody of the Company, from which to make the payment. *There was no liability on the part of the company, unless it held money subject to the tax, belonging to one of its creditors.* Whether the corporation be considered as garnishee, trustee or agent, in all of these cases, the liability to pay the tax was limited to the funds of another, in possession of the company, from which the payment could and was to be made.

In *Merchant's National Bank vs. Pennsylvania*, 167 U. S. 461, (42 Law 236) the opinion, by *Mr. Justice Brewer*, showed that the State of Pennsylvania had assessed a state tax of 4 mills on the dollar, of actual value, of each share of stock in National Banks, within the State, but permitted the Bank *to collect annually from the shareholders thereof* a tax of 8 mills on the dollar, on the par value, of all such shares, and such shares were, thereupon, to be exempt from local taxation. (Official page 461; Law page 237).

The opinion said:

" It is further insisted that the act is really one taxing the bank,
" and not taxing the shares of stock as the property of the stock-
" holders; but this is obviously a misinterpretation of the statute.
" *That simply makes the bank the agent to collect from the share-*
" *holders the tax imposed upon the shares.* The language of Sec.
" 7, in this respect, is clear, for it provides that the National Bank
" which fails to elect *to collect and pay* the 8 mills shall make a
" report to the auditor general 'setting forth the full number of
" shares of the capital stock issued by such national bank, and the

"actual value thereof, whereupon it shall be the duty of the auditor "general to assess the same for taxation,' and also that after such "report is made to the auditor general, 'it shall be his further duty "to hear any stockholder who may desire to be heard on the ques- "tion of valuation of the shares as aforesaid; and he shall have "the right by other evidence, to satisfy himself as to the correct- "ness of the valuation of said shares of stock in said report con- "tained, and to correct said valuation. The auditor general shall "thereupon *transmit to the said national banks a statement of* "*the valuation and assessment* so made by him, and the *amount of* "*the tax* due to the commonwealth *on all of said shares, which tax* "*the said banks shall within thirty days after receiving said state-* "*ment, collect from their shareholders and pay over into the state* "*treasury.*" (Official pages 465-466; Law page 238)

"That the State has the right to make the bank *its agent to col-* "*lect* the tax from the individual stockholders was settled in *First* "*National Bank vs. Kentucky*, 76 U. S. (9 Wall) 353. (9 Law "701)." ~~(Official pages 465-466; Law page 238)~~

In the foregoing case, (*Merchant's National Bank vs. Pennsylvania,*) there are two distinct provisions as to agency of the Bank to collect and pay over the *taxes assessed on the shares belonging to the shareholders.*

The first one, (Sec. 6 of the Act), authorizes the Bank to collect annually from its shareholders 8 mills on the par value of the stock, and pay over the same, thereby exempting the shares from local taxation. There is no *primary liability* to make payment, on the part of the bank; *it is liable only, as an agent in possession, for such sums as it actually collects,* sufficient in amount to pay the required 8 mills on the par value of the shares.

The second one, (7 of the Act), requires the bank to collect, within thirty days, the 4 mill tax assessed by the auditor general against the shares belonging to those shareholders who have not paid the 8 mill tax under 6. There is no *primary liability* here attempted to be established *against the corporation.* The bank is only liable for what it actually collects from the shareholders. True, there is a duty to collect imposed on the Bank, and its negligent failure to perform this statutory duty, might, and probably would, create a liability on the part of the Bank to the State for any loss thereby occasioned to the State. But that liability for negligence is of an entirely different kind, from the liability which holds the bank primarily, for the payment of the tax from its own funds though it has no funds of the shareholder in its possession, and although it has used due diligence to collect; but has failed so to do.

There is not a syllable in the foregoing opinion, which authorizes a State to *compel the bank primarily to pay*, from its own funds, a tax on the shares belonging to the individual shareholders, although it has in its possession no funds belonging to such shareholders, and, by due diligence, is unable to obtain such funds from the shareholder.

In *Corry vs. Baltimore*, 196 U. S. 466, (49 Law 556), wherein the opinion was delivered by *Mr. Justice White*, plaintiff in error, as plaintiff, commenced a suit to restrain the New York and Baltimore Transportation Company from paying to the State of Maryland and the City of Baltimore, certain taxes assessed, under the laws of the State of Maryland, upon 150 shares of stock of said Company standing in the name of plaintiff in error on the books of the Company; the Mayor, Council and Treasurer of the City, and the Treasurer of State were also made parties defendant. The bill was dismissed by the trial court, and that judgment was affirmed by the Maryland Court of Appeals and also by this Court. The opinion said:

"The statutes undoubtedly impose upon a Maryland corpora-
" tion the duty of paying for and on account of the owners the
" taxes assessed in respect of the shares, *and compel such payment*
" *without reference to the dividends*, giving to the corporation a
" lien upon the shares of stock, and entitling the corporation, when
" it pays the taxes, to proceed by a personal action to recover the
" amount paid." Citing Maryland cases. (Official page 472; Law page 560).

Quoting from *U. S. Electric Co. vs. State*, 79 Md. 63, the opinion of this court further said:

" But the tax is not a tax upon the stock, or upon the corpora-
" tion, but upon the owners of the shares of stock, though the offi-
" cers of the corporation are *made the agents* of the State for the
" collection of the State tax * They, (the shares), belong to the
" stockholders, respectively and individually, and when, for the sake
" of convenience in collecting the tax thereon, the corporation pays
" the State tax upon these shares into the State treasury, it pays
" the tax, not upon the company's own property, nor for the com-
" pany, but upon the property of each stockholder, and for each
" stockholder respectively, by whom the company is entitled to be re-
" imbursed. Hence, when the owner of the shares is taxed on
" account of his ownership, and the tax is paid for him by the
" company, the tax is not levied upon or collected from the corpora-
" tion at all." (Official pages 472-473; Law page 560).

The opinion of this Court further stated, that the Court of Appeals of Maryland had held, "moreover, that *the State might*

compel the corporation to pay such taxes in behalf of the stockholders, and confer upon the corporation a right of action to obtain reimbursement from a stockholder when the payment was made." (Official page 474; Law page 560).

The opinion of this Court further referred to its prior decisions, wherein the corporation, *having in its possession funds, belonging to the owners of the property taxed,* had been required, *as agent,* to pay therefrom the taxes assessed, and quoted from the Kentucky case, (*First National Bank vs. Kentucky*) 76 U. S. (9 Wall) 353; 19 Law 701), the extract, previously set out in this argument, *showing its analogy to a garnishment proceeding.* (Official pages 475-476, law page 561).

The opinion of this Court further said:

"The principle upheld by the rulings of this Court to which we "have referred, concerning the taxation by the States of stock in "national banks, is that the sovereignty which creates a corpora-"tion has the incidental right to impose reasonable regulations "concerning the ownership of stock therein, and that a regulation "establishing the *situs* of stock for the purpose of taxation, *and* "*compelling the corporation to pay the tax on behalf of the share* "*holder,* is not unreasonable regulation. Applying the principle, "it follows that a regulation of that character, prescribed by a "State in creating a corporation, is not an exercise of the taxing "power of the State over persons and things not subject to its "jurisdiction. And we think, moreover, that the authority so "possessed by the State, *carries with it the power to endow the* "*corporation with a right of recovering against the stockholder* "*for the tax which it may have paid on his behalf.*" (Official pages 476-477; Law page 562).

In the foregoing case, (*Corry vs. Baltimore*), it is unquestioned that the corporation had in its possession funds with which to pay said tax. Corry, the owner of the shares, objected to the constitutionality of the Maryland statute, and sought a restraining order to prevent its payment and collection. The facts bring the case squarely within the prior holdings of this court on the point, that a corporation *in possession of funds* sufficient to pay a tax assessed upon the shares of stock in the hands of the shareholder, *may be made the agent* of the state to collect and pay over said tax, and may be required to pay the same from the funds of the shareholder in its possession. This is as far as any decision of this court has gone, as applied to the facts before the Court, and the 'Corry' case in its facts, is identical in this respect, with the prior cases, on the same point, heretofore decided by this Court.

The 'Corry' case however, shows that the Maryland Court of

Appeals had gone a stage further, and had held that the corporation might be made primarily liable for the payment of the tax on the shares, and be compelled to pay such tax, whether or not it had in its possession, money or property of the shareholder, sufficient in amount to pay the tax, and. also, be compelled to look for recoupment to a personal action against the shareholder, or to the enforcement of a lien on the shareholder's shares, as security for repayment of the tax on the shares, paid by the corporation.

Only the corporation, compelled to make such payment, could question the constitutionality. under the Federal Constitution, of the State statute compelling primary payment by the corporation. In the 'Corry' case, the Transportation company, did not raise this question; Corry could not do so. The point, therefore, has not been directly presented to or passed upon by this Court, but only by the Maryland Court of Appeals.

In *Hershire vs. First National Bank,* (Iowa City), 35 Iowa 272, plaintiff as county treasurer, sued defendant Bank, to recover about $2000.00 of taxes claimed to be due from the Bank, as taxes assessed upon the shares of stock of the Bank, owned by non-resident stockholders.

The laws of Iowa of 1868, Chapter 153, 2, required a listing of the shares of stock of the National Bank, in the name of each shareholder, and provided that 'each banking association shall be liable to pay the same *as the agent* of its shareholders, under the provision of Sec. 725 of the Revision of 1860, and it shall be the duty of the association to retain so much of any dividend or dividends belonging to any shareholder as shall be necessary to pay any taxes levied upon his or her shares.' (Opinion page 274).

Section 725, above referred to, required the assessment to any person acting *as the agent* of another of any property in his possession or under his control or management, with a view to investing, loaning or using the same for pecuniary profit, and made the agent personally liable for the tax on the same. (Opinion p. 275).

The opinion, by *Cole, J.*, stated, that the liability of the Bank to pay taxes was placed on the same footing as *the liability of other agents* to pay taxes under said section 725; and that this liability only arose where money, property or credits were under their or its control. *"Hence this fact must be averred in order to state a cause of action."* (Opinion pages 275-276).

The opinion further said:

"The shares in the capital stock of the banking association are the " property, and under the control of the shareholders. They are " not under the control or management of the banking association

"in any legitimate sense. * * All that we here intend to say is that "the shareholder himself in legal contemplation owns, controls, "and manages his own shares, nothing different in fact being "shown. And hence, the banking association is not liable for the "tax due from shareholders, under our statute, simply because "they are holders of shares in the capital stock of such banking "association." (Opinion page 276).

"In brief, our view of the statute is, that it effects a statutory "garnishment of the bank, to secure the payment of the taxes due "from its shareholders. To make it liable, *it must be shown that "the bank now has or has had dividends or other money or prop-"erty belonging to the delinquent shareholder.*" (Opinion page 277).

Reference is made in the foregoing 'Hershire' case to the Kentucky statute which was before this court in the case of *First National Bank vs. Commonwealth of Kentucky*, 76 U. S. (9 Wall), 353 (19 Law 701), and the Iowa Supreme Court stated that the Kentucky statute created an absolute liability of the Bank to pay the tax.

We have previously quoted from the opinion of this court, in said case of *First National Bank vs. Kentucky*, wherein this court likened the Kentucky statute to a claim in favor of the State against a non-resident stockholder, for which *the bank could be attached or garnisheed, "and made to pay the debt out of the means of its shareholder under its control."* This was immediately followed by the decisive statement: *"This is in effect, what the law of Kentucky does in regard to the tax of the State on the bank shares."* (Official page 362; Law page 703- right column).

Section 725 of the Revision of Iowa of 1860, referred to in the 'Hershire' case, is in substance, the same, and is almost identical in terms, in its material parts, with Code of Iowa, of 1897, 1320, on the same subject, quoted near the commencement of this division of our brief.

We further claim, however, that even if the right given by the Iowa statutes to the corporation to recover, by action from the shareholder, the amount paid in discharge of the tax assessed on the shares of stock, and if the lien on the shares of stock in favor of the corporation to secure the amount of the tax so assessed and paid by the corporation, were held to apply to Savings Banks, still, we insist that the tax against the corporation, and the provision of the statutes, above referred to, are in violation of the Federal constitutional provision against the taking of property without due process of law.

There can be no doubt that this scheme of taxation, and method of collection of the tax is primarily and exclusively adopted for the benefit of the State, to secure prompt payment in one sum, of the taxes assessed upon the shares of stock. It is conceded that the purpose is right and proper, if it is carried out in such manner as not to effect the constitutional rights of the corporation under the Federal Constitution. The plan is of no benefit to the corporation. At the very best, the corporation can only succeed in recovering what it has paid out by way of taxes, and then it will stand just where it did before the payment of the taxes was made. The *whole operation was without any benefit or advantage whatever to the corporation.*

But we insist that the right to sue for a recovery, or the legal steps required to enforce the lien, necessarily involve the employment of counsel, learned in the law, at an expense equal to a large percentage of the tax paid, and frequently many times exceeding the whole amount of the tax involved, besides the necessary and heavy incidental expenses of litigation, which are not taxable as costs, together with the loss of the use of the money paid, until the litigation is finally determined and the judgment collected, if that proves collectible.

Such a statute compels the corporation to relieve the state and its municipal subdivisions from the expense of counsel fees and the incidental expenses of litigation to collect its taxes, and enables the State to shoulder this burden from itself onto the corporation, without any possibility of recoupment for these expenditures, by the corporation, from any source. This is a compulsory taking of the property and funds of the corporation for the benefit of the State, without compensation and without due process of law. If the corporation is unwilling to expend these large sums to secure recoupment, it is compelled to pay and lose the tax, which is only another form of taking property without compensation, and without due process of law.

This is a complete departure from the garnishment principle of collecting taxes, which has received the approval of this court.

We do not, for an instant, question the right of the state to enforce the collection of a tax, by a suit brought and conducted by its own legal officers, and at its own expense, or its right to establish and enforce, by its own legal officers and at its own expense, such lien as it may see fit to establish or create, upon or against the property of the tax payer, within the jurisdiction of the State. to secure payment of the tax assessed.

The question is, whether the State, by compulsory statute, may relieve itself from these necessary expenses, and compel a corpora-

tion, at its own expense, to an indefinite and indeterminable amount, and without any benefit to the corporation, to maintain expensive litigation so as to collect a tax for the sole and exclusive use and benefit of the State, without possibility of reimbursement of such expenditures, or, as an alternative, to pay the tax itself, and then lose it without any possibility of reimbursement.

The case of *Corry vs. Baltimore*, 196 U. S., 466, (49 Law 556) serves, to some extent, to illustrate the point we are urging. In that case, the total taxes involved were two sums respectively of $43.27 and $36.49, aggregating $79.76. The litigation was in reality between the shareholder, Corry, and the City and State officials. The corporation was required, by law, to pay the tax and was willing to do so, out of the shareholder's money under its control. In case it had voluntarily paid the tax, and had had no money or property of the shareholder in its possession, the same litigation would have arisen between Corry and the corporation.

The 'Corry' case passed through the Circuit Court of Baltimore City, the Court of Appeals of Maryland, and, finally, through this court. It is manifest that the tax involved was a mere bagatelle to the fees of counsel and the incidental expenses incurred in the progress of the litigation. The same thing is true of the case at bar.

Several other of the cases which have been before this Court illustrate the point under consideration. In *Merchant's National Bank vs. Pennsylvania*, 167 U. S. 463, 464, (42 Law 237), this Court, speaking through *Mr. Justice Brewer*, said:

"Again it will be perceived that this inequality in the burdens "results from a privilege offered to all, and in order to *induce* "*prompt payment of taxes, and payment without litigation.* To "justify the propriety of such inducement, *we need look no further* "*than the present litigation.*"

Many shareholders are not residents of the city, or of the State, where the Bank is located. Shares are frequently sold, transferred, pledged or hypothecated, so that the persons who own shares on January 1st of the year of assessment, do not, on the following January 1st, have any title to or interest therein, or only a mere equity of redemption subject to a large prior lien, while the shareholders themselves get into failing circumstances or insolvency, respectively rendering a mere lien on the stock or a personal judgment against the shareholder utterly worthless, involving a loss to the bank, both of the taxes paid and of all sums paid for attorneys's fees and expenses in pursuing its legal remedies and this under a compulsory provision of law, from which the corporation can obtain no relief, unless it is secured to the corporation by the Federal Constitution.

The Iowa provision for the enforcement or foreclosure of a lien on the stock, belonging to the shareholders, to recover the tax assessed upon the shares of stock, and paid by the corporation, is of doubtful validity, consisting merely of a notice by registered letter. The sale must be by Sheriff, whose fees must be advanced by the Bank. After an apparent title has been thus acquired, through the Bank bidding in the shares, for we cannot believe that any other well advised person would bid, at least until the law is settled by this Court, the Bank, has a costly action to defend its title, and to pay out counsel fees and expenses of litigation against any assignee, transferee or pledgee of the stock claiming title to or interest therein, or a lien thereon, acquired prior to the date of the sheriff's sale, or the date of the payment of the tax, or whenever the lien accrues; besides being compelled to redeem from prior liens.

The date when this lien on the shares accrues, under the statute in question, is very uncertain. Apparently it only arises on and from the date of payment, by the corporation, of the taxes assessed upon the shares of stock. In any event, a year or more must elapse between the date of the assessment and the date when the tax matures or the date when the lien accrues thereon.

A compulsory payment by the corporation, of the tax on the shares in the hands of a shareholder, where there is no recoupment at all, or, only a partial recoupment of the sum so paid by the corporation, is, to the extent that there is no recoupment, a taking from or depriving of the corporation of its property without compensation and without due process of law.

So also, a compulsory payment by the corporation of sums necessarily expended by the corporation, other than taxable costs, in pursuing its legal remedies to secure the recoupment of money paid by it in discharge of taxes assessed upon shares, in the hands of an individual shareholder, as to which expenditures there is no possibility of any recoupment, is a taking from or depriving the corporation of its property, for the sole use and benefit of the State, without compensation, and without due process of law.

In *Norwood vs. Baker*, 172 U. S. 269, (43 Law 443), this Court, speaking through *Mr. Justice Harlan*, said:

"It has been adjudged that the due process of law prescribed by "that (14th) amendment, requires compensation to be made or "secured to the owner when private property is taken by a State, "or under its authority, for public use." Citing cases. (Official page 277; Law page 447).

This is not the payment, by the Bank, of its own taxes, or of taxes assessed on its property. It is the compulsory payment of

the taxes of another, the shareholder, for the sole benefit of the State, or the compulsory expenditure and loss, for the sole benefit of the State, of money paid out by the corporation other than taxable costs, in litigation in attempting to obtain recoupment or reimbursement from the shareholder, of the taxes on his shares, paid by the corporation.

It may be assumed that a State has the power to impress with or impose upon any funds belonging to a shareholder in the hands of the Bank on the date as of which the assessment for taxation is made, (in Iowa, on January 1st of each year), a lien for the taxes subsequently assessed and levied upon the shares of stock belonging to said shareholder, and to authorize the corporation to withhold said funds from the stockholders, and to apply them upon the tax assessed, when such tax becomes due and payable. It may further be conceded that such provision would be constitutional, only a small amount of bookkeeping being necessary to keep the accounts straight. Such provisions would be fair to all concerned, the shareholder, the corporation and the State.

But no such provision of the law exists in Iowa. The tax is assessed as of January 1, 1902, and becomes payable on January 1st, 1903, a whole year later, and there is no provision to secure or protect the corporation during this interval. The Bank is absolutely bound to pay the tax when it becomes due, whether it ever gets a recoupment or not, and the provisions for recovering or recoupment by action, or by enforcement of the lien, even if they applied to Savings Banks, compel a large unascertainable and involuntary payment of the funds of the Bank, without any benefit to the corporation, and for the sole and exclusive benefit of the State. This is a taking of property without compensation and without due process of law.

Equal protection of the laws: Under the statutes of Iowa, which have already been set out *supra* in this division of our brief, and are hereby referred to, plaintiff in error claims that it has been denied the equal protection of the laws, secured to it by the XIVth Amendment to the United States Constitution.

These Iowa Statutes require shares of stock in State Banks, Savings Banks, and Loan and Trust Companies, to be assessed, for taxation, to the corporations, without regard to the money or property of the shareholder which may be in, or come into, the possession or custody, or under the control, of the corporation; while shares of stock of National Banks and of all corporations organized under the laws of Iowa, other than those above enumerated, are assessed for taxation to the individual shareholders.

These statutes also require, that where the shares are assessed

for taxation to the shareholders, the corporation shall pay the taxes so assessed on the shares, and the statutes give to such corporations a right of full recoupment and reimbursement, from the shareholder, for the taxes so paid by the corporation, with a right on the part of the corporation to withhold sufficient of the funds belonging to the shareholder to make such recoupment, a right to sue the shareholder for the reimbursement of the taxes so paid, and the statutes also create a lien upon such shares of stock, and provide a method for selling the same, to recoup and reimburse the corporation for taxes so paid.

None of these rights of recoupment or reimbursement, retention of funds, to sue for a recovery, or to enforce a lien upon the shares, with a right to sell the same to pay the taxes, are given to Savings Banks and the other enumerated corporations, to whom shares of stock are assessed, so as to reimburse and indemnify the corporations for taxes paid by them, upon the shares belonging to the individual shareholders.

This is not a classification arising from any difference in making the assessment, because of the nature of the business conducted, or the nature of the property to be assessed. The property in each case is identical,—the shares of stock belonging to the shareholder. The basis of taxation is identical—, the value of such shares on January 1st of each year. The ownership is identical,—the shareholders are the owners of the shares assessed.

The protection, right of reimbursement and indemnification against loss in favor of the corporation, is, in each case, equally due to each and all of the corporations, which pay taxes so assessed on the property of the shareholders. The giving of this protection, right of reimbursement and indemnification to part of these corporations, and denying it to the other corporations, is a denial to the latter of the equal protection of the laws.

The *Bell's Gap R. R. Co. vs. Pennsylvania*, 134 U, S, 232, (33 Law 895), the State assessed a three mill tax upon the nominal or face value of the funds, instead of assessing it upon the actual value. It was claimed that this deprived the corporation of the equal protection of the laws. In this connection, the opinion delivered by *Mr. Justice Bradley*, discussed the general question of a denial of the equal protection of the laws and said:

"But, be this as it may, the law does not make any discrimina-
" tion in this regard which the State is not competent to make.
" All corporate securities are subject to the same regulation. The
" provision in the XIVth Amendment, that no State shall deny to
" any person within its jurisdiction the equal protection of the
" laws, was not intended to prevent a State from adjusting its

"system of taxation in all proper and reasonable ways. It may, "if it chooses, exempt certain classes of property from any taxa- "tion at all, such as churches, libraries and the property of chari- "table institutions. It may impose different specific taxes upon "different trades and professions. and may vary the rates of ex- "cise upon products, it may tax real estate and personal property "in a different manner; it may tax visible property only, and not "tax securities for payment of money; it may allow deductions "for indebtedness, or not allow them. All such regulations, and "those of like character, so long as they proceed within reasonable "limits and general usage, are within the discretion of the State "Legislature, or the people of the State in framing their Con- "stitution. But clear and hostile discriminations against particular "persons and classes, especially such as are of an unusual character, "unknown to the practice of our governments, might be obnoxious "to the constitutional prohibition. (Official page 257 Law page "895). "It would, however, be impracticable and unwise to at- "tempt to lay down any general rule or definition on the subject, "that would include all cases. They must be decided as they "arise. We think that we are safe in saying that the XIVth "Amendment was not intended to compel the State to adopt an "iron rule of equal taxation. If that were its proper construction "it would not only supersede all those constitutional provisions and "laws of some of the States, whose object is to secure equality "of taxation, and which are usually accompanied with qualifi- "cations deemed material; but it would render nugatory those dis- "criminations which the best interests of society require, which "are necessary for the encouragement of needed and useful in- "dustries, and the discouragement of intemperance and vice, and "which every State, in one form or another, deems it expedient "to adopt. (Official Page 257 Law Page 895).

"The general purpose and scope of the XIVth Amendment, and "the general qualifications necessary to be applied to it, are well "stated in *Barbier vs. Connolly*, 113 U. S. 27, 31, (28 Law 923, "924). *Mr. Justice Field*, in delivering the opinion of the court, "there said: "The XIVth Amendment, in declaring that no "'State shall deprive any person of life, liberty or property with- "out due process of law, nor deny to any person within its juris- "diction the equal protection of the laws,' undoubtedly intended not "only that there should be no arbitrary deprivation of life or liber- "ty, or arbitrary spoliation of property, but that equal protection "and security should be given to all under like circumstances in the "enjoyment of their personal and civil rights; that all persons should "be equally entitled to pursue their happiness and acquire and en- "joy property; that they should have like access to the courts of

"the country for the protection of their persons and their prop-
"erty, the prevention and redress of wrongs and the enforcement
"of contracts; that no impediment should be interposed to the pur-
"suits of anyone except as applied to the same pursuits by others
"under like circumstances that no greater burdens should be laid
"upon one than are laid upon others in the same calling and con-
"dition; and that in the administration of criminal justice no
"different or higher punishment should be imposed upon one than
"such as is prescribed to all for like offenses. But neither the
"Amendment—broad and comprehensive as it is—nor any other
"amendment, was designed to interfere with the power of the
"State, sometimes called the police power, to prescribe regulations
"to promote the health, peace, morals, education and good order
"of the people, and to legislate so as to increase the industries of
"the State, develope its resources and add to its wealth and pros-
"perity." (Official page 5 Law page 895.)

"With due regard to these considerations, we are clearly of
"opinion that the method of assessing the tax in question, on
"the face value of corporate securities in Pennsylvania, is not
"violative of the XIVth Amendment to the Constitution.
(Official page 5 Law page 895).

To the same effect see: *Merchant's National Bank vs. Pennsylvania;* 167 U. S. 464, 465; (42 Law 237). *Barbier vs. Connolly;* 113 U. S. 27, 31, (28 Law 923, 924). *Ragan vs. Farmer's Loan and Trust Co.,* 154 U. S. 399, (38 Law 1024).

In *Cotting vs. Godard,* 183 U. S. 79, (46 Law 92), the Legislature of the State of Kansas passed an Act, although general in its terms, which, in its application to the facts, limited the charges to be made by only one corporation engaged in the stock yard business in said State.

The Act depended, for its application, on the amount of business done, but in fact, there was only one corporation to which it could apply. This Act was held to be in violation of the equal protection of the laws clause of the 14th amendment to the Federal Constitution.

While that case and the case at bar differ considerably in the facts involved, the opinion, delivered, by *Mr. Justice Brewer,* carefully examined the prior decisions of this Court, on the subject of the equal protection of the laws, and the principles involved in the subject. (Official pages 100 to 112, Law pages 105 to 110).

One proposition stated in the opinion, was: "Do the laws secure to an individual an equal protection when he is allowed to come into Court and make his claim or defense, subject to the condition that, upon failure to make good that claim or defense,

the penalty for such failure either appropriates all of his property, or subjects him to extravagant and unreasonable loss? (Official page 100 Law page 105).

The opinion then used certain illustrations and thereupon proceeded thus:

"Of course, these are extreme illustrations, and they serve only "to illustrate the proposition that a statute, (although in terms "opening the doors of the courts to a particular litigant), which "places upon him as penalty for a failure to make good his claim "or defense a burden so great as to practically intimidate him "from asserting that which he believes to be his right, is, when no "such penalty is inflicted upon others, tantamount to a denial of the "equal protection of the laws." (Official page 101; Law page 105).

Upon the subject of classification the opinion said:

"In *Gulf Ry. Co. vs. Ellis*, 165 U. S. 150, 159, (41 Law 666, "669), in which was presented solely the question of classifica- "tion, we said, referring to many cases, both State and National: "But arbitrary selection can never be justified by calling it clas- "sification. The equal protection demanded by the 14th Amend- "ment forbids this". (Official page 107, Law page 108). But "while recognizing to the full extent the impossibility "of an imposition of duties and obligations mathematically "equal upon all, and also recognizing the right of classification "of industries and occupations, we must, nevertheless, always re- "member that the equal protection of the laws is guaranteed, *and* "*that such equal protection is denied when upon one of two parties* "*engaged in the same kind of business and under the same condi-* "*tions burdens are cast which are not cast upon the other.*" (Official pages 111-112; Law page 109).

There is no reasonable or just ground for the arbitrary selection of certain of the private corporations, organized under the laws of a State, and assessing to those corporations the shares of stock belonging to the shareholders, and making those corporations primarily liable for the payment of the taxes so assessed, while, as to all other private corporations organized under the laws of the same State, the shares of stock are assessed to and the taxes thereon payable out of the funds of the shareholders themselves.

There is no reasonable or just ground for giving to part of the private corporations of a State a right of recoupment or reimbursement for taxes assessed upon shares owned by the shareholders which taxes have been paid by the corporation, with a

right to sue thereon, and to have a lien on the shares of stock and the right to sell such shares, to secure such recoupment or reimbursement, while arbitrarily selecting other of the private corporations of the State and refusing to them such right of recoupment, reimbursement, right to sue, and the lien upon and right to sell the shares.

There is also no reasonable or just ground for compelling private corporations, *as agents,* to pay to the State, in one sum, all of the taxes assessed against all of the shares of stock of said corporations, and compelling the corporations either to lose the amounts so paid as taxes, or to seek recoupment by as many different proceedings, by way of litigation, as there are shareholders, for numerous comparatively small sums, when the necessary, but unascertainable expenses of such litigation, equal a large per cent, or all, or many times the amount of, the tax involved, in each case and the collectibility of the judgment, or the value of the title to the shares obtained, is problematical, or utterly worthless; *while all other agents* in the State are required to pay taxes only from the property or funds of the principal, in the possession or under the control of such agents.

Respectfully submitted,

HORATIO F. DALE AND WM. G. HARVISON,

Attorneys for Plaintiff in error.

FILE COPY.

Supreme Court of the United States

No. 86.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY

AS A BOARD OF REVIEW

No. 88.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY,

AS A BOARD OF REVIEW.

In Error to the Supreme Court of the State of Iowa.

Brief and Argument for plaintiffs in error

NATHANIEL T. GUERNSEY,
Attorney for Plaintiff in Error People's Savings Bank.

GEO. F. KENNEY,
Attorney for Plaintiff in Error Des Moines Savings Bank.

Supreme Court of the United States

NO. 83.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY

AS A BOARD OF REVIEW

NO. 92.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY,

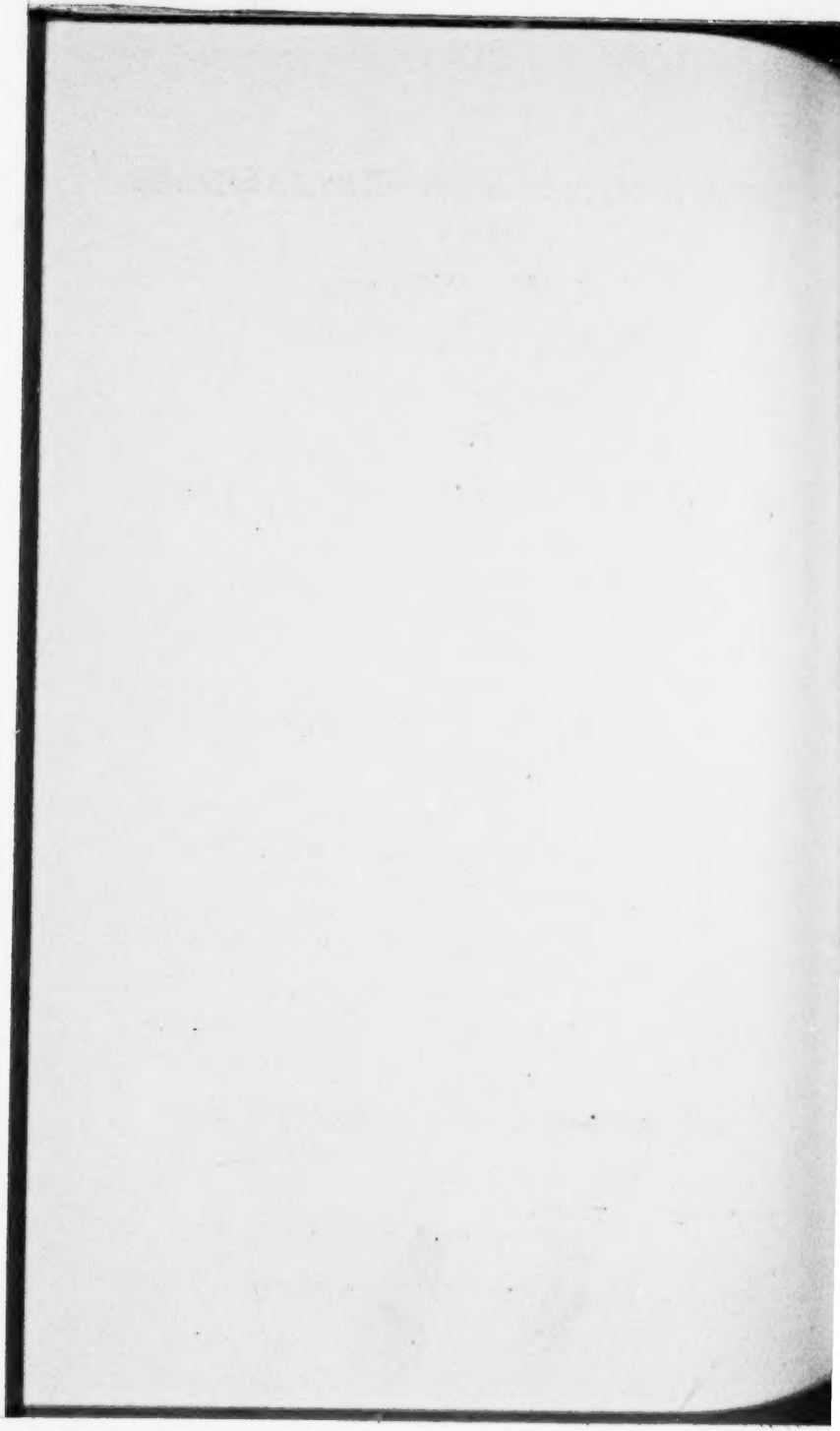
AS A BOARD OF REVIEW.

In Error to the Supreme Court of the State of Iowa.

Brief and Argument for Plaintiffs in Error

NATHANIEL T. GUERNSEY,
Attorney for Plaintiff in Error People's Savings Bank.

GEO. F. HENRY,
Attorney for Plaintiff in Error Des Moines Savings Bank.



Supreme Court of the United States

NO. 83.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY

AS A BOARD OF REVIEW

Brief and Argument for Plaintiffs in Error

STATEMENT.

This case involves the validity of section 1322 of the code of 1897 of Iowa. It relates to the taxation of savings banks, and prescribes:

Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. Shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies and not to the individual stockholders. At the time the assessment is made, the officers of national banks shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares.

It will be noted that the express provision is that the *shares of stock* of savings banks shall be assessed *to the banks* and *not to the individual stockholders.* There is no provision in this or any other statute of Iowa for the reimbursement of the bank, either by the shareholders or out of their property for the amount of such taxes.

When the plaintiff in error was assessed in 1902, it claimed the right to deduct from the amount of its capital United States bonds in which part of its capital was invested, in the sum of $62,060. This claim was denied, and the bank has brought the case here by writ of error directed to the supreme court of Iowa.

Broadly stated the contention of the bank upon the fundamental proposition is that the assessment complained of is vulnerable to one of the following objections:

(a) Either this statute is in fact a statute providing for the assessment of the capital of the bank so that it has the right to deduct the amount of its capital invested in United States bonds,

(b) Or, if this is an assessment upon the shares owned by the shareholders, then the statute provides for taxing the bank upon property which it does not own, and therefore deprives the bank of its property without due process of law and in contravention of the fourteenth amendment to the constitution of the United States, so that the entire assessment and tax are void.

General provisions of the Iowa code as to assessments for taxation.

In Iowa taxes are assessed and levied in the following

manner: The county auditor procures and furnishes to each assessor a supply of blank assessment rolls on which to enter the names of all persons, partnerships and corporations assessed, which rolls are made in duplicate. It is the duty of the assessor to detach the duplicate and deliver it to the person assessed. (Sec. 1360.) The form of these assessment rolls is indicated by Exhibits "3" and "4" (Trans. 11-13), Exhibit "3" being the duplicate and Exhibit "4" the copy of the roll which remained in the book, constituting the "stub" in such book. It is the duty of the assessor to assess every person in his township (Sec. 1354), and to notify him of the valuation, and, if he feels aggrieved, to appear before the board of review and show why the assessment should be changed (Sec. 1356). This notice is in the form shown at the end of Exhibit "3" and is prescribed by Section 1360 of the code.

It is the duty of the assessor to complete his assessment by the 1st of April (Code Sec. 1365) and to lay the rolls before the local board of review on or before the first Monday of April for correction, and after the correction has been completed by the board of review, to make up the assessor's books in duplicate from such assessment rolls (code Sec. 1366).

The city council constitutes the board of review for each city and is required to meet on the first Monday of April to adjust assessments for the city by raising or lowering the assessment of any person or corporation in such manner as to secure the listing of property at its actual value and the assessment of property as its taxable value (code Sec. 1370). Any person aggrieved by the action of the assessor may make oral or written complaint to the board of review and may appeal to the district court from the action of the board within twenty days after its adjourn-

ment. The court is required to hear the appeal in equity, and "determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof." (Code Sec. 1373.) Personal property is assessed as of January 1st, of each year.

The facts in detail.

In the instant case, the capital of the bank was made up of three items, capital stock $100,000, surplus $25,000, undivided profits $9,871.98, total $134,871.98. (See Exhibit "1," trans. page 7.)

Included in this amount was $62,060 invested in bonds of the United States, besides some real estate and stock in other corporations. On the 9th of April, 1902, the assessor assessed the bank and gave it the duplicate roll (Ex. "2," trans. page 9), showing the following assessment:

"*Moneys and credits* from form 2, $55,171.98."

The original roll or "stub" retained by the assessor was Exhibit "4," which then did not have the figures $122,871 upon it, but showed the same assessment shown by the duplicate. It will be noticed that Exhibit "2" and Exhibit "4" are both marked assessment roll, 1902, No. 6575, indicating themselves that one is the duplicate of the other.

Later, on the 22d of April, 1902, another duplicate was furnished to the bank, which is set out as Exhibit "3" (trans. page 11) and shows an assessment of $122,871 for "corporation stock." This was received by mail by the bank (trans. page 10). Note also the admission of page 14, as follows:

It is admitted by both parties that the stub Exhibit "4" is the only stub upon which the two notices, Exhibits "2" and "3" were issued, and that it is the only assessment in the assessment roll against the plaintiff.

On the same day the Peoples Savings Bank filed with the city council its protest, Exhibits "5" and "6," which are set out at page 15 of the transcript. The assessor's book was made up showing the assessment to the bank of $122,871 on account of *"moneys and credits."* The assessment as made by the assessors was confirmed by the board of review and an appeal was duly taken.

Jacob G. Beck, who made the assessment of $122,871, was sworn as a witness (trans. page 20). He says that the original assessment was based upon a deduction from the capital of the value of the bonds of the United States; that later he was advised by the city solicitor that this deduction ought not to be made; and that the assessment of $122,871 finally made included the amount invested in government bonds. He says:

There were changes made in the assessments of some of the other banks in Des Moines at about that time. There were not any savings banks here in Des Moines which owned government bonds whose assessments were not changed just about that time. It was an oversight if there were. And in each instance the assessments of these savings banks, when they were changed, were increased and the increase was probably to an amount equal to their holdings of government bonds.

As to whether when I came to change this assessment it was my opinion that it was too low because it did not include government bonds, it was my opinion that it was a proper assessment when I made it.

Q. I have no doubt of that, but this assessment that was shown by the assessment rolls was originally $55,171.98, and you increased that to $122.871. You

thought that this first assessment was wrong because it didn't include the government bonds?

A. They had been deducted from the value of their stock at that time; yes, sir.

Q. You evidently thought they ought to be included?

A. After I consulted with the city attorney I thought that they ought to be assessed for the value of their shares of stock irrespective of their government bonds.

Q. Without taking the bonds into account and deducting them?

A. Yes, sir.

Q. Just about this time this question had been referred to the city attorney?

A. Yes, sir.

Q. He had given an opinion saying these bonds ought not to be deducted in making this assessment?

A. I don't know. His opinion to me wasn't about that. It was simply as to how to make the assessment.

When I discovered that I had apparently made the assessments on an erroneous basis, because I had deducted these bonds, they were changed right through.

The assessment was sustained by the district court and by the supreme court of the state.

The laws of Iowa provide that in assessing the stock of corporations not covered by special statutes, the value of the shares shall be ascertained. From this value is deducted the value of the real estate, which is assessed directly to the corporations. The shares are assessed to the stockholders (code section 1323). The assets of the plaintiff included some shares in other corporations and the collateral question is presented whether these shares should have been taxed directly through the other corporations or through the taxation of the savings bank.

The questions presented here were raised by oral and written objections before the board of review (trans. page 5) by a written statement in the district court on appeal (trans. page 2) and by an assignment of errors in the supreme court of Iowa (trans. page 24).

SPECIFICATIONS OF ERRORS RELIED UPON.

The assignment of errors is set out on page 33 of the transcript. The errors relied upon by the plaintiff in error are the following:

First: That the supreme court of Iowa erred in rendering its judgment and decree affirming the assessment for taxation made against the plaintiff in error, in controversy in this cause, and affirming the said judgment and decree of the district court of the state of Iowa, in and for Polk county.

Second: That the supreme court of the state of Iowa erred in holding that the assessment complained of was not an assessment for taxation levied upon bonds of the United States which were the property of the plaintiff in error.

Third: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of Section 8, Article I of the constitution of the United States.

Fourth: That the supreme court of Iowa erred in holding that the bonds of the United States owned b ythe plaintiff in error were not exempt from taxation under the provisions of Section 3701 of the Revised Statutes of the United States.

Fifth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of the act of congress under which said bonds were issued, it being an act entitled, "An act to provide ways

and means to meet war expenditures and for other purposes," approved June 13, 1898.

Sixth: That the supreme court of Iowa erred in holding that the property of the shareholders of the plaintiff in error would be assessed and taxed to the plaintiff in error, without provision for its reimbursement for taxes so paid, by the owners of the property taxed, because,

(*a*) To so hold is a denial to the plaintiff i nerror of the equal protection of the laws, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

(*b*) To subject the plaintiff in error to such taxation constitutes a taking of the property of the plaintiff in error without due process of law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of his property without due process of law.

Seventh: That the supreme court of Iowa erred in holding that the assessment in question could properly be made under Section 1322 of the code of 1897 of Iowa, because:

(*a*) If the said section authorizes the assessment of bonds of the United States for purposes of taxation the same is void because in contravention of Section 8, Article I, of the Constitution of the United States.

(*b*) If said section authorizes the assessment for purposes of taxation of bonds of the United States the same is void because in contravention of Section 3701 of the Revised Statutes of the United States.

(*c*) If said section authorizes the assessment for tax-

ation of said bonds of the United States the same is void because in contravention of the express provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

(*d*) If the said section authorizes the assessment for taxation of the bonds of the United States which were sought to be assessed, the same is void because in contravention of the provision of Section 1, Article XIV of the Amendments to the Constitution of the United States that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States because under both the laws and Constitution of the United States plaintiff in error was entitled to hold the bonds in question exempt from taxation by the state of Iowa.

(*e*) If the said section authorized the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of its shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment then the said section is void because in contravention of the provision of Article XIV of the Amendments to the Constitution of the United States which provides, "nor shall any state deprive any person of life, liberty or property without due process of law," there being no provision in the laws of the state of Iowa for the reimbursement of the plaintiff in error for taxes so exacted from it.

(*f*) If the said .section authorizes the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of the shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is

void because in contravention of Section 1 of Article XIV of the Amendments to theConstitution of the United States which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The laws of Iowa provide that all property shall be taxed to the owners thereof, and where corporations other than savings banks are made primarily liable for taxes imposed upon their shares of stock, provide for their reimbursement, but these laws make no provision for the reimbursement of savings banks on account of taxes levied against the shares of their stock and exacted from the banks.

Eighth: That the supreme court erred in holding that the plaintiff in error is subject to taxation, without reimbursement upon shares of stock not owned by it, because:

(*a*) Such taxation amounts to a taking of the property of the plaintiff in error without due process of law, in contravention of the provision of Section 1, Article XIV of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law.

(*b*) Such taxation amounts to denial to the plaintiff in error of the equal protection of the laws, in contravention of the provision of Section 1 of Article XIV of the Amendments to the Constitution of the United States, that no state shall deny to any person within its jurisdiction the equal protection of the laws.

Ninth: That the supreme court of Iowa erred in refusing to deduct from the assessment of the plaintiff in error the item of $4,040 on account of stocks in other corporations owned by it.

Tenth: That the supreme court of Iowa erred in refusing to deduct from the assessment in controversy the item

of $8,480 on account of real estate owned by the plaintiff in error.

POINTS.

I.

In so far as Section 1322 of the code of Iowa authorizes the taxation of the bonds of the United States it is void because in contravention of the constitution and statutes of the United States.

Rev. Stat. U. S., Sec. 3701.

Weston vs. City of Charleston, 2 Pet. 448.

Bank vs. New York, 2 Black 620.

Bank Tax Cases, 2 Wall. 200.

Act of Congress entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

II.

Section 1322 of the code of Iowa.

This section provides that shares of stock of state and savings banks shall be assessed to such banks and not to the individual stockholders. It distinguishes between shares of stock in national banks and in savings banks, the former being assessed to the shareholders, the bank being merely the collecting agent and the shareholders being permitted to deduct their debts, while the latter are assessed to

the bank, which is required to pay the tax, without any right to reimbursement from the shareholder, the shareholder having no right to deduct debts.

Bank vs. Rerick, 96 Iowa 238, 242.
Code section 1325.

III.

The decisions of the supreme court of Iowa.

The supreme court of Iowa has construed Section 1322 of the code in

German American Savings Bank vs. City of Burlington, 118 Iowa 84;
National State Bank vs. City of Burlington, 119 Iowa 696.
First National Bank vs. City of Independence, 123 Iowa 482.

The leading case is the *German American Savings Bank* case, the subsequent cases merely following it. In that case the court says:

(*a*) The statute requires the taxation of the shares, which are the property of the shareholders;

(*b*) Under the doctrine of *Van Allen vs. Assessors,* this is not a tax upon the government bonds;

(*c*) The tax is upon the property of the bank and the assessment is therefore not vulnerable to the objection that it is an assessment upon property not owned by the bank.

Bank vs. Rerick, 96 Iowa 238, does not decide that such an assessment is proper, but merely decides that it does not violate certain provisions of the constitution of the state of Iowa.

IV.

Section 1322 of the code of Iowa, in fact imposes a tax upon the capital of the plaintiff in error, and therefore its government bonds should have been deducted.

The construction of this section announced by the supreme court of Iowa must be accepted.

Railroad Co. vs. Kentucky, 183 U. S. 503, 507.

The tax imposed by this statute, as it is construed by the supreme court of Iowa, is nothing more than a tax on capital, void in so far as the capital is invested in government bonds.

Code Section 1321.

The tax is against the owner of the bonds, upon an assessment which includes the value of the bonds, without provision for reimbursement by the shareholder. It therefore does not come within the rule of

Van Allen vs. Assessors, 3 Wall. 573,

because the tax is neither assessed against nor paid by the owner of the bonds.

The court will look to the substance and effect of the statute.

Home Insurance Co. vs. New York, 134 U. S. 594, 598.

Applying this test, the statute is a tax on the capital of the corporation.

New Orleans vs. Houston, 119 U. S. 278;
St. Johns National Bank vs. Bingham Township, 113 Mich. 203.

and this is held in the German American Savings Bank case.

The doctrine of equivalency invoked by the supreme court of Iowa makes the tax in fact a tax on the bonds.

Owensboro Nt'l Bank vs. Owensboro, 173 U. S. 664.

A tax on the value of the capital is a tax on the property in which the capital is invested.

Railroad Co. vs. Pennsylvania, 198 U. S. 341, 353.
Stapylton vs. Thaggard, 91 Fed. 93.
National Bank of Virginia vs. City of Richmond, 42 Fed. 877.
Brown vs. French, 80 Fed. 166.

To the same effect in principle are the cases holding that the shares of a national bank cannot be taxed to it *in solido.*

First National Bank vs. Fisher, 45 Kans. 726.
National Bank of Chemung vs. City of Elmira, 53 N. Y. 49.
Sumpter County vs. National Bank of Gainesville, 62 Ala. 464.

City of Springfield vs. First National Bank, 87 Mo. 441.
First National Bank vs. Meredith, 44 Mo. 500.
National Com. Bank vs. City of Mobile, 62 Ala. 284.

See also

National Bank vs. Hoffman, 93 Iowa 119.
People ex rel. vs. Coleman, 126 N. Y. 433.

V.

The statute cannot be sustained upon the theory that it makes the bank a mere collecting agent for the state.

In such cases the tax is not upon the property of the bank, and provision is always made for its reimbursement.

Stapylton vs. Thaggard, 91 Fed. 93.
Bank vs. Commonwealth, 9 Wall. 353, 362.
Hershire vs. First Nat'l Bank, 35 Iowa 272, 277.

There is no conflict between these cases and

Cleveland Trust Co. vs. Lander, 184 U. S. 111.

There the law provided for taxing the shares to the shareholder and for reimbursement by him.

VI.

If Section 1322 requires the taxation of the shares of the shareholders to the bank, it is void because within the inhibition of the fourteenth amendment.

A tax exacted without jurisdiction is the taking of property without due process of law.

Railroad Co. vs. Pennsylvania, 198 U. S. 341.
Corry vs. Baltimore, 196 U. S. 466.

If what this statute requires is a tax upon the property of the shareholders assessed against and to be paid by the bank, without provision for its reimbursement, the bank is deprived of its property without due process of law, and the law itself is void.

State Tax on Foreign-held Bonds, 15 Wall. 300, 319.
Cooley on Taxation (3d ed.), pages 1, 3, 12 and 27.
County of Santa Clara vs. Southern Pac. R. Co., 18 Fed. 385, 392.
United States vs. Railroad Company, 17 Wall. 322.
Henkle vs. Town of Keota, 68 Iowa 334.

VII.

Relief to which the plaintiff in error is entitled.

(*a*) If section 1322 requires the payment of taxes upon property not owned by the bank, it is void, and the entire assessment and tax are void, and should be set aside.

(*b*) If the statute contemplates an assessment upon the property of the bank, its capital invested in government bonds should be deducted from the gross capital, and, after deducting its real estate and corporation stocks, the balance is the amount of the assessment.

Campbell vs. City of Centerville, 69 Iowa 439.

Under the code of Iowa, a bank is entitled to recover back taxes illegally exacted from it, even though they were voluntarily paid; so that the payment of these taxes under protest, as was done in the case at bar (trans. p. 19) is not a waiver of any rights of the bank.

Code Section 1417.
Lauman vs. Des Moines County, 29 Iowa 310.
Richards vs. Wapello County, 48 Iowa 507.
Winzer vs. Burlington, 68 Iowa 279.
Thomas vs. Burlington, 69 Iowa 140.
Lonsdale vs. Carroll County, 105 Iowa 452.

ARGUMENT.

I.

In so far as Section 1322 of the code of Iowa authorizes the taxation of the bonds of the United States it is void because in contravention of the constitution and statutes of the United States.

This proposition will not be controverted. See

Rev. Stat. U. S., Sec. 3701.
Weston vs. City of Charleston, 2 Pet. 448.
Bank vs. New York, 2 Black 620.
Bank Tax Cases, 2 Wall. 200.
Act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

II.

Section 1322 of the code of Iowa.

This section, in its entirety, is as follows:

Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. *Shares of stock of state and savings banks* and loan and trust companies *shall be assessed to such banks* and loan and trust companies *and not to the individual stockholders.* At the time the assessment is made, the officers of *national banks* shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed.

Note the distinction made between the shares of stock of national banks and the shares of stock of state and savings banks. The shares of a national bank must be assessed to the individual stockholders, at the place where the bank is located. The shares of state and savings banks are to be

assessed to such banks *"and not to the individual stockholders."* The officers of national banks are required to furnish the assessor with a list of all the stockholders and the number of shares owned by each, and the assessor is required to "list to each stockholder under the heading of corporation stock the total value of such shares."

The shares of the national banks are assessed to the individuals, to the people who own them. The shares of the savings banks are to be assessed to the banks; and it is expressly stated that they shall not be assessed to the stockholders who own them. The stockholders of savings banks are not to be listed with the assessor, and the assessor is not required to list to each stockholder the value of his shares.

In

Bank vs. Rerick, 96 Iowa 238, 242,

the supreme court of Iowa referring to the sections of the code relative to the taxation of shares of stock in banks, points out the radical differences between the rules applicable to state and national banks. The court says:

These provisions make the association liable on the taxes levied upon the shares of a stockholder only to the amount of dividends which may be payable on account of the shares, and possibly for other property of the shareholders, if any, under the control of the association. *Hershire vs. Bank*, 35 Iowa 272. But the shares must be assessed as the property of the owner. An assessment of them to the association is void. *Bank vs. Hoffman*, 93 Iowa 119 (61 N. W. Rep. 418). And such shares are credits, within the meaning of section 814 of the code, from which the owner is

entitled to deduct the debts which he is in good faith owing. *First Nat. Bank of Albia vs. City Council of Albia*, 86 Iowa 34 (52 N. W. Rep. 334).

The sections of the code just considered are unlike the act of the Twenty-third General Assembly in question. That provides that the shares of the capital stock of the association to which it refers shall be assessed, not to the shareholder, but to the association. Whether such shares are credits, from which the owner may deduct his debts for the purpose of taxation, is referred to in argument, but as the references so made are brief, and since the question is not necessarily involved in the determination of the cause, we prefer to leave it undecided. It was mentioned, but not decided in *First Nat. Bank of Albia vs. City Council of Albia, supra.*

The Rerick case was decided under a statute earlier than the one now under consideration, upon which the present enactment was based. It is set out in the opinion, and does not essentially differ from the present law. The requirements of Section 1322 that a statement be furnished the assessor to enable him to ascertain the value and that real estate be deducted seem to apply to both classes of banks.

Section 1325 of the code is the general provision requiring corporations to pay the taxes assessed to their shareholders, and protecting them in their right to recover back money so paid. This is the only provision for the recovery of such payments, and the court will observe that it is limited to cases where the tax is assessed to the shareholder, so excluding savings banks from its operation.

Section 1325 is as follows:

The corporations described in the preceding sections shall be liable for the payment of *the taxes assessed to the stockholders of such corporations,* and such tax shall be payable by the corporation in the same manner and under the same penalties as in case of taxes due from an indi-

vidual tax payer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his postoffice address, as the same appears upon the books of the company, or is known by its secretary.

There is nowhere in the laws of Iowa any provision under which a savings bank has the right to reimburse itself from its stockholders or their property on account of the payments made by it for taxes assessed against it under section 1322 of the code of Iowa. There is such provision in favor of every other corporation which is made the collecting agent for taxes levied against its shareholders. Section 1325 *supra* does not refer to them; it only refers to corporations whose stockholders are assessed.

It is not suggested by the supreme court of Iowa, nor has it been claimed by counsel that savings banks have the right to recover these taxes from their shareholders. This contention is negatived by the holding that the bank is in effect taxed on its own property.

III.

The decisions of the supreme court of Iowa.

The supreme court of Iowa had occasion to construe section 1322 of the code in

German American Savings Bank vs. City of Burlington, 118 Iowa 84;

National State Bank vs. City of Burlington, 119 Iowa 696;

First National Bank vs. City of Independence, 123 Iowa 482;

as well as in the case at bar and the cases which were submitted with it.

The leading case is the *German American Savings Bank* case. In the subsequent cases but little had been done but to re-affirm it, and the case at bar was affirmed on that opinion, so that it is in effect the opinion in this case. In the German American Savings Bank case, the court held that section 1322 required the assessment to be made upon the shares of stock, as distinguished from the capital stock which is the property of the bank. So construing the statute, it determined that the value of the bonds could not be deducted, because the tax was not upon the property of the bank, but upon the property of the shareholder; and basing its conclusion upon the doctrine of equivalency, held that the objection that the tax was upon property not owned by the bank was not sound. So far as the opinion is material we quote it:

Section 1322 of the code provides that "shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies, and not to the individual stockholders." The contention of the appellee that the assessment in this case was in fact upon the capital of the bank, instead of an assessment of the shares of stock, is not sustained by the record. On the other hand, it appears clearly to us that the council intended to assess the shares of stock to the bank as provided in the section referred to, and that the assessment

was so made in fact. There is a well-defined and well-recognized distinction between the capital of a bank and the shares of its stock. Indeed, we do not understand that this proposition is seriously questioned by the appellee. *First National Bank of Louisville vs. Kentucky,* 9 Wall. 358 (19 L. Ed. 701); *Farrington vs. Tennessee,* 95 U. S. 686 (24 L. Ed. 558). The shares of stock having been assessed to the bank as provided by law, instead of to the stockholders, may the bank deduct from such assessment the United States bonds held by it as a part of its capital, because of their exemption from taxation? The negative of this proposition is well settled by the highest authority. The tax on the shares of stock of a bank is not a tax on its capital. *Van Allen vs. Assessors,* 3 Wall. 573 (18 L. Ed. 229); *Farrington vs. Tennessee, supra; Railroad Co. vs. Morrow,* (Tenn.), 11 S. W. Rep. 348 (2 L. R. A. 853); *Hubbard vs. Board,* 23 Iowa 130; *Bank vs. Rerick,* 96 Iowa 238. See, also, note in *McHenry vs. Downer* (Cal.), 45 L. R. A. 737 (s. c. 47 Pac. Rep. 779), on the subject generally. The tax in this case, not being on the capital of the bank, but upon the shares of stock held by the individuals, the bank had no right to deduct therefrom its United States bonds. *First National Bank of Louisville vs. Kentucky, supra; Palmer vs. McMahon,* 133 U. S. 666, 10 (Sup. Ct. Rep. 324, 33 L. Ed. 772); *Trust Co. vs. Lander* (Ohio), 56 N. E. Rep. 1036, and *Trust Co. vs. Lander* (22 Sup. Ct. Rep. 394, 46 L. Ed. 456). And it is in this respect that the case at bar is distinguished from *Ottumwa Sav. Bank vs. City of Ottumwa,* 95 Iowa 176, and *State Exch. Bank of Parkersburg vs. Town of Parkersburg,* 112 Iowa 104, in both of which cases the question of the taxation of the capital of the bank was alone involved. Whether, under this statute, the capital may be taxed as well as the shares of stock, we do not determine, for no such question is before us, no attempt having been made to tax the capital of the bank. The statute under consideration is simply an enlargement of Chapter 39 of the acts of the 23d General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act it was held in *Bank vs. Rerick,* 96 Iowa 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such cir-

cumstances, would be paying taxes on property that it did not own; that, "as the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes." This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and, if it is making money and is paying dividends or reserving a surplus, the payment of the tax by the corporation, instead of by the individual stockholders, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property.

Bank vs. Rerick, 96 Iowa 238,

referred to in connection with the doctrine of equivalency in the foregoing excerpt, does not decide the question that is presented in this case. It arose under a statute which provided that the shares of state or commercial banks should be assessed to the banks and not to the individual shareholder. It was contended that this statute violated the provision of the state constitution prohibiting the granting of special privileges or immunities and the passage of local and special laws, and further that the taxes were not uniform, because the holders of stock in national banks had the right to deduct debts from their assessments, which could not be done by the holders of the shares in these state banks. These are the constitutional questions decided in that case.

In the two national bank cases that have been cited, in

119 and 123 Iowa, the court in each instance treated the case as ruled by the German American Savings Bank case, ignoring the radical difference between the law as to national banks and the law as to savings banks. In the present cases, a short *per curiam* opinion was filed, which did not discuss the questions involved.

To summarize, the construction of this statute adopted by the supreme court of the state is that it requires the taxation of the shares and not of the capital, in such a sense that the bank may not deduct its bonds, but that the tax is not upon shares in such a sense that the bank is taxed on property not owned by it, but by its shareholders.

IV.

Section 1322 of the code of Iowa, in fact imposes a tax upon the capital of the plaintiff in error, and therefore its government bonds should have been deducted.

We are not unmindful of the rule that the consideration which this court may give to a question of this kind is to be restricted to its federal aspect. As was said by this court in

Railroad Co. vs. Kentucky, 183 U. S. 503, 507:

> Of course, our consideration of it must be restricted to its federal aspect; in other words, we are to inquire whether the state enactments, constitutional and statutory, in the particulars involved in this controversy, and under the construction given them by the court of appeals, are in conflict with the Fourteenth Amendment of the Constitution of the United States.

Our contention is that as construed by the supreme court of Iowa the tax imposed by the statute in question is in effect nothing but a tax on capital, and so, consequently, to the extent to which that capital is invested in government bonds, beyond the power of the state and void.

We invite the attention of the court to a further consideration of just what the supreme court of Iowa has decided. It is that a savings bank under this section may be taxed on the value of its capital less real estate, including United States bonds held by it.

The section, it is true, says the "shares * * * shall be assessed to such banks." But the same section also says:

> To aid the asessor in fixing the value of such *shares*, the corporations shall furnish him a verified statement of all the matters provided in the preceding section which shall also show separately, *the amount of capital stock, and the surplus and undivided earnings*, and the assessor * * * shall fix the value of such *stock, taking into account the capital, surplus and undivided earnings.*"

It is significant that here in the next to the last line the word "stock" is used instead of the word "shares" which first appears in this section. The idea that the tax is in fact to be levied upon the property of the bank instead of upon the shares of stock is emphasized by the last phrase of the section, which is as follows, "and the property of such corporations shall not be *otherwise* assessed." Note here that what the statute says is not that the property of the corporation shall not be assessed, but that the property shall not be *otherwise* assessed, the use of the word "otherwise" characterizing this assessment as in the mind of the legislature, an assessment upon the property of the bank. The

statement referred to as "provided in the preceding section," is, to quote from the section referred to:

"a sworn statement, showing the assets, aside from real estate, and liabilities of such bank or banker on January 1st of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items;

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due;

3. The amount of all deposits made with them by others and also the amount of bills payable;

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation;

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof.

This is a statement "showing the assets" that is the property of the bank. The value of the shares as so ascertained is nothing more nor less than the value of the capital or assets of the bank, less its real estate, but including its United States bonds. The result is exactly the same as if the assessment were in form as well as in fact, an assessment directly upon capital.

The assessment is against the bank; the tax is paid by the bank, out of its own funds; and the valuation upon which the tax is levied includes the value of the United States bonds. No distinction whatever is made between these bonds and the other personal assets of the bank.

Unless the bonds are taxed, no personal assets of the bank are taxed to it, and all taxes paid by it are paid upon the property of its shareholders.

This is not the doctrine of

Van Allen vs. Assessors, 3 Wall. 573,

and the long line of cases holding that to tax the share to the shareholder is not taxing its capital to the bank. In these cases the value of the government bonds owned by the institution in question does not directly or indirectly form the basis of any tax levied against *it*, and the tax *is not levied against the owner of the bonds;* while under the statute in question here, the tax is based upon the value of the bonds, and is levied against their owner. In the Iowa case the statute is so construed as to require the owner of the bonds to pay the tax, and to pay just exactly the tax that he would pay if the assessment were in form made upon the bonds *eo nomine*, while in *Van Allen vs. Assessors* and the cases of its class, the statutes under consideration were sustained solely because they exacted nothing from the owners of the bonds. This distinction is the very gist of the whole matter.

The rule is perfectly well settled that this court, in order to determine whether a statute violates the federal constitution or statutes, will look not to its form, but to its substance, and consequences. If its result is to subject bonds of the United States constituting a part of the capital of a savings bank, to the same burden of taxation that its other personal property bears, then the exemption of these bonds under the federal constitution has been nullified. This is the important and controlling factor.

The method devised to effect this result is wholly immaterial. This court said in

Home Insurance Co. vs. New York, 134 U. S. 594, 598:

Nor can this inhibition upon the states be evaded by any change in the mode or form of the taxation, provided the same result is effected—that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be accomplished indirectly. Through all such attempts the court will look to the end sought to be reached, and if that would trench upon the power of the government, the law creating it will be set aside or its enforcement restrained. Thus in *Henderson vs. Mayor of New York,* 92 U. S. 259, 268, a statute of New York provided that the master or owner of any vessel bringing passengers from foreign ports into the port of New York should give a bond in the sum of $300 for each passenger landed, against his becoming a public charge for four years thereafter, or pay within twenty-four hours thereafter $150 for each passenger, and that, if neither bond was given nor payment made, a penalty of $500 for such failure would be incurred, which should be a lien upon the vessel. It was contended that the object of the requirement was not taxation, but protection against pauperism, and therefore valid as within the police power. But the court said that in whatever language the statute may be framed its purpose must be determined by its reasonable and natural effect, and judged by that criterion the tax was either on the owners of the vessel for the right of landing passengers or upon the passengers themselves; and that, therefore, the statute was a regulation of commerce and void.

To the same purport is the familiar case of *Brown vs. Maryland,* 12 *Wheat.* 419, so often cited in this court, where it was contended that a license tax required of an importer to sell his goods, while held in bulk as imported, was a tax only upon his occupation. But the court observed that this was only changing the form without varying the substance of the tax, adding that "it is treating a prohibition which is general as if it were confined to a particular mode

of doing the forbidden thing. All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself."

If this test be applied to the statute under consideration, if its purpose be determined by its reasonable and natural effect, then there can be no doubt but that, as construed by the supreme court of Iowa, it in effect subjects these bonds to state taxation.

The case

New Orleans vs. Houston, 119 U. S. 278,

is squarely in point upon this proposition.

In that case the legislature had exempted a corporation from all taxes in excess of $40,000 per annum. A law was passed which provided for a tax upon the shares of the shareholders, to be paid by the corporation. There the law gave the corporation a right, limited to the amount of dividends in its hands, to recover back from the stockholders; while under section 1322, the corporation has no right to recover anything back from the stockholders. In the New Orleans case this court decides that this was a tax upon the property of the corporation and not a tax upon the shares of the shareholders and that the act in question was void. We quote from the opinion in that case as follows:

But the question of legislative intent is always open upon the language of the exemption. In the present case the corporation is exempted by its charter from all other taxes and licenses of any kind whatever in excess of the sum of $40,000 per annum, and yet by Act. No. 77, though the as-

sessment is not to be made upon its capital stock, but upon the shares of shareholders appearing upon its books, nevertheless, the tax so assessed is to be paid by the company, although it is entitled to collect the amount so paid from the shareholder on whose account it is payable; but this payment by the company is to be made irrespective of any dividends or profits payable to the shareholder out of which it might be repaid. That it is substantially a tax upon the corporation itself, is unequivocally shown by the subsequent clause, which authorizes a deduction from the amount of taxes assessed to each share of its proportion of the direct property taxes paid by the company as such under sections 1 and 3, and of all exempt property belonging to the corporation. But as all the property of the Louisiana State Lottery Company is exempt from taxes after payment of the annual sum of $40,000, nothing remains to be changed as a tax upon the shareholders as distinct from the corporation under the provisions of this section. Indeed, it is quite apparent from the language of the whole section, that, while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of the individual shareholders, but are to be paid by the corporation, *so that while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name.*

The case just cited is decisive here. It decides that where a corporation is taxed upon the shares of its shareholders without provision for reimbursing it fully, this is in effect, a tax upon the property of the corporation. In the case at bar, there is no right to recover back any portion of the tax paid. There is no pretense that it is not a tax exacted directly and solely from the corporation.

In the foregoing extract it is said that the tax here in question is unequivocally shown to be a tax on the corporation itself by the fact that these taxes were to be de-

ducted from the taxes levied on the shares. This argument is entirely applicable here, because here the taxes paid by the bank, are in lieu of all taxes paid by the shareholders. The statute under consideration does not stop with making the shares assessable to the bank, but expressly prohibits their assessment to the shareholders. Here, as there, this shows unequivocally that this is a tax on the corporation itself; here, as there, it is apparent from the whole section, as construed by the supreme court of Iowa, that *"while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect."*

The doctrine of *New Orleans vs. Houston* is reaffirmed in

St. Johns National Bank vs. Bingham Township,
113 Mich. 203.

This was an action brought by the bank to enjoin a tax collector who was seeking to enforce against the bank certain taxes levied against the holders of certain of its shares in a case where the bank had acquired the title to the shares prior to the time at which the taxes became a lien upon the shares. With reference to this matter the court said:

The defendant in no event would have the right to compel the bank to pay upon the other shares, the sale having been made before the tax became a lien. A bank cannot be compelled to use its assets to pay a tax where it cannot reimburse itself against the stock, as provided by law. *City of Boston vs. Beal,* 51 Fed. 306; *New Orleans vs. Houston,* 119 U. S. 265, 7 Sup. Ct. 198. If this could be done, it would substantially be a tax upon the corporation itself.

Note that this case squarely recognizes the doctrine that the power to compel a bank to act as a collecting agent does not include the right to compel it to pay taxes where no provision is made for its reimbursement; and further that the court says that such a course would be in effect a tax upon the corporation itself.

In the latter part of its opinion in the *German American Savings Bank* case, set out *supra*, the supreme court of Iowa itself adopts the position that the tax imposed by this statute is in effect a tax on the property of the bank, in reaching the conclusion, stated at the end of the excerpt quoted, that this method of taxation "does not * * * compel payment of the tax by those who do not own the property." The property referred to is of course the property taxed. The opinion therefore, while sustaining the tax is in form a tax on the shares, concedes that it is in substance and effect a tax on the property of the bank, including the United States bonds in question. This is in harmony with our entire argument upon the effect of this statute.

We respectfully submit that the supreme court of Iowa erred, under such circumstances and upon the authority of *Van Allen vs. Assessors* and like cases, in applying the distinction between the taxation of the shares to the shareholder and the taxation of the capital to the bank. In a most lucid and exhaustive exposition of this matter this court in

Owensboro National Bank vs. Owensboro, 173 U. S. 664,

has demonstrated that where the property taxed is in ef-

fect the property of the bank, the tax is illegal, and does not come within the rule of the *Van Allen* case.

In a single paragraph the result of the discussion is stated thus:

It is to be remarked that it is patent from the opinion of the court that, if the shares of stock had been considered as in anywise the equivalent of the bonds, in which the property of the bank was invested, the tax would have been held invalid despite the authority to tax the stock given by the act of congress, as such authority would not have been construed as authorizing a violation of the faith of the United States by taxing bonds issued by the government which were not subject to taxation. It follows then that not only did this decision refute the claim of equivalency between the tax on the bank or its property or franchise and the tax on the stock in the names of the stockholders, but by a negative affirmative it demonstrates that if the two are equivalent the tax in this case would be illegal, since the record here admits that a sum, at least the equivalent of the capital, surplus and undivided profits of the bank, was invested in bonds of the United States. The contention of equivalency then destroys itself, and if it were conceded would bring about the illegality of the tax, in support of the legality of which the argument is advanced.

If, therefore, the supreme court of Iowa is right, and this is in effect a tax on the property of the bank, the tax is necessarily illegal, and that court misapplied the doctrine of *Van Allen vs. Assessors.*

To quote more at length from the *Owensboro* case, the court there says:

It is, however, urged that whilst the taxes may not be in form imposed on the shares of stock in the names of the shareholders, and may be in form a tax on the franchise or

property of the bank, nevertheless they are equivalent to a tax on the shares of stock in the names of the shareholders, and therefore do not violate the act of congress. But this proposition concedes that the taxing statute does not conform to the act of congress, and yet invokes its permissive authority, since, as already shown, without the grant made by the act of congress there would be no power to tax at all. Passing, nevertheless, this contradiction, and looking beneath the mere form, we come to the substance of things. The alleged equivalency, in order to be of any cogency, must of necessity contain two distinct and essential elements—equivalency in law and equivalency in fact. Does it contain either? is the question.

To be equivalent in law, involves the proposition that a tax on the franchise and property of a bank or corporation is the equivalent of a tax on the shares of stock in the names of the shareholders. But this proposition has been frequently denied by this court, as to national banks, and has been overruled to such an extent in many other cases relating to exemptions from taxation, or to the power of the states to tax, that to maintain it now would have the effect to annihilate the authority to tax in a multitude of cases, and as to vast sums of property upon which the taxing power is exerted in virtue of the decisions of this court holding that a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the names of the stockholders. A brief review of the two classes of cases, by which the doctrines just stated are overwhelmingly established, will make the foregoing result clear. The earliest case in the reports of this court is *Van Allen vs. The Assessors* (1865), 3 Wall. 573. The tax was on the shares of stock in the names of the shareholders, pursuant to the act of congress. Two issues were presented, one the assertion that the state banks were assessed on their capital and surplus, and therefore that stockholders in national banks were substantially discriminated against. This was held to be well taken; clearly, therefore, deciding that there was no equivalency between taxing the capital and surplus in the hands of the bank and taxing shares in the names of the shareholders, for if the two had ben equivalent the decision would necessarily have been otherwise. The other question in the

case was thus stated by the court, through *Mr. Justice Nelson,* page 581:

"The main and important question involved, and the one which has been argued at great length and with eminent ability, is, whether the state possesses the power to authorize the taxation of the shares of these national banks in the hands of stockholders, whose capital is wholly invested in stocks and bonds of the United States."

This question was examined, and it was decided that, as the shares of stock in the hands of the shareholders were distinct and different subjects—matter of taxation from the property or rights of the bank, that therefore the power conferred by congress could be exercised so as to tax the shareholders, even although the property of the bank was invested in non-taxable bonds of the United States, because the two were distinct and different things.

It is to be remarked that it is patent from the opinion of the court that, if the shares of stock had been considered as in anywise the equivalent of the bonds, in which the property of the bank was invested, the tax would have been held invalid, despite the authority to tax the stock given by the act of congress, as such authority would not have been construed as authorizing a violation of the faith of the United States by taxing bonds issued by the government, which were not subject to taxation. It follows then that not only did this decision refute the claim of equivalency between the tax on the bank or its property or franchises and the tax on the stock in the names of the stockholders, but by a negative affirmative it demonstrates that if the two are equivalent the tax in this case would be illegal, since the record here admits that a sum, at least the equivalent of the capital, surplus and undivided profits of the bank was invested in bonds of the United States. The contention of equivalency then destroys itself, and if it were conceded would bring about the illegality of the tax, in support of the legality of which the argument is advanced.

Following this came the decision in *People vs. Tax Commissioners,* (1866) 4 Wall. 244, in which, reiterating the decision in *Van Allen vs. The Assessors,* it was held, because the property of the bank was distinct and separate from the shares of stock in the names of the shareholders, therefore the latter were not entitled to deduct

exempt property belonging to the bank from the assessment on their shares. The court said, again through *Mr. Justice Nelson,* and in part quoting from the opinion in the *Van Allen case,* p. 258:

"The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. * * * The interest of the shareholder entitles him to participate in the net profits earned by the bank, in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain, of the corporation, after the payment of its debts. This is a distinct, independent interest or property, held by the shareholder like any other property that may belong to him;" and, we add, of course, is subject to like taxation.

The next case in order of time is *Bradley vs. The People* (1866), 4 Wall. 459. The question which the case presented was whether a tax on the property or rights of the bank was the legal equivalent of a tax on the shares of stock in the names of the shareholders. The argument of counsel was that in determining this question the method was immaterial, but the substance would be considered. The argument urged (p. 460): "Neither the national government, the creator of the species of property now taxed, nor the shareholders can be interested in the *methods* which may be adopted by the state for the imposition of the tax." The court, through *Mr. Justice Nelson,* after referring to the decision in *Van Allen vs. The Assessors,* and the tax there imposed, said (p. 462):

It was in that case attempted to be sustained on the same ground relied on here, that the tax on the capital was equivalent to tax on the shares, as respected the shareholders. But the position was answered that, admitting it to be so, yet, inasmuch as the capital of the state banks may consist of the bonds of the United States, which were exempt from state taxation, it was not easy to see that the tax on the capital was an equivalent to a tax on the shares.

In *National Bank vs. Commonwealth* (1870), 9 Wall.

353, a statute of the state of Kentucky which imposed a tax of fifty cents a share on bank stocks, or stock in any moneyed corporator, of loans or discounts owned by individuals, corporations or societies, was held to authorize a tax on the shares of the stockholders, as distinguished from the capital of the bank invested in federal securities, and this, although the tax was collected from the bank instead of the individual stockholders. In the opinion of the court, delivered by *Mr. Justice Miller,* a summary statement was made of the doctrine enunciated in the prior decisions recognizing the distinction between the property owned by an incorporated bank as a corporate entity and the property or interest of the stockholders in such bank, commonly called a share.

These cases, interpreting the act of congress, have never been questioned, and indeed form the basis upon which the taxation of the shares of stock in the names of the shareholders allowed by the act of congress has been made efficacious for the purpose of bringing a vast amount of property within the taxing power of the states, which would have been excluded had not the principles which the cases announced been established. If the postulate upon which they necessarily rest be overthrown by saying that there is an equivalency between the taxation of the property of the bank and the shares of stock in the names of the stockholders it would follow that the principles upheld by the cases would disappear with the destruction of the reasons upon which they were placed. It would then necessarily follow that the grant by congress of authority to tax the shares of stock in the names of the shareholders could not be exercised where the bank held bonds of the United States exempt from taxation; that the two things being the same, the shareholders would be entitled to deduct the property of the bank from the sum of the taxation of the shares; in other words, that the right to tax the shareholders would be a vain thing.

This opinion says further:

There being then no equivalency between the assess-

ment of the bank and the assessment of the shares in the names of the shareholders, it follows that the tax here complained of, which was assessed on the franchise or intangible property of the corporation, was not within the purview of the authority conferred by the act of congress, and was therefore illegal.

Whilst this conclusion suffices to dispose of the case, we advert to the contention that although there may not be a legal equivalency, there is nevertheless one in fact, and therefore the tax should be sustained. It may be that in the case before us, there is a coincidence between the sum of the tax levied upon the corporation and the amount which would have been imposed had the shares of stock in the names of the shareholders been assessed according to the act of congress. But that this is not the necessary result of the taxing statute is too plain to require comment. The fact that it is not is well illustrated by *Henderson Bridge Company vs. Kentucky, supra,* for there the tax which was sustained on the franchise or intangible property of the corporation admittedly enormously exceeded the total of the capital stock, and proceeded upon the theory that the bonds issued by the corporation were an element to be taken into consideration in fixing the value of the franchise or intangible property. If the mere coincidence of the sum of the taxation is to be allowed to frustrate the provisions of the act of congress, then that act becomes meaningless and the power to enforce it in any given case will not exist. This follows, since if mere coincidence of amount and not legal power be the test, only a pure question of fact would arise in any given case. The argument that public policy exacts that where there is an equality in amount between an unlawful tax and a lawful one, the unlawful tax should be held valid, does not strike us as worthy of serious consideration.

What we have quoted demonstrates beyond question that the supreme court of Iowa either erred in holding that the property taxed was in effect the property of the bank, or erred in holding that the bank was not entitled to have its bonds deducted.

If the entire opinion of the Iowa supreme court is to be

accepted in connection with the construction of section 1322, we submit that our conclusion that this section as construed by that court contemplates a tax on the bonds is incontrovertible, so that to this extent the section is invalid and the decree below must be reversed.

The case is squarely within the doctrine laid down by this court in

Railroad Co. vs. Pennsylvania, 198 U. S. 341, 353,

where the court said:

This court has so frequently held that a tax on the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and in consequence no tax can be thus levied which includes property that is otherwise exempt. *Bank of Commerce vs. New York City,* 2 Black 620; *Bank Tax Case,* 2 Wall. 200; *Pullman's Car Co. vs. Pennsylvania,* 141 U. S. 18; *Fargo vs. Hart,* 193 U. S., 490, 498, 499.

The character of the statement from which the value of the shares is to be ascertained in the case at bar is wholly similar to the statements which are the basis of the assessments in the express cases.

The case of

Stapylton vs. Thaggard, 91 Fed. 93,

decided by the circuit court of appeals for the fifth circuit, sustains our contention. There, the law of Florida

contained the following provision as to the assessment of shares of national banks:

All shares of the banking association, etc., * * * held by any person or body corporate shall be included in the valuation of the personal property of such person or body corporate in the assessment of taxes in the town or city where such banking association is located and not elsewhere * * * and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall pay the same as the agent of each of its shareholders, and the said association may retain so much of any dividend belonging to any shareholder, as shall be necessary to pay any taxes levied upon its shares.

As to this provision the court says:

Under these provisions it is difficult to construe the assessment complained of in this case as one upon the shares of the bank, and against the shareholders.

In

National Bank of Virginia vs. City of Richmond,
42 Fed. 877,

a bill of taxes was assessed upon the shares of the bank, of which the following is a copy:

1889. (Ward 3.)

The Merchants' National Bank to City of Richmond, Dr.,

Tax on shares of stock	$255,000
Less value of real estate	53,942
	$201,058
At $1.40	$2,814.81

With reference to this assessment the court says:

The tax in these cases is assessed upon all the shares issued by the association *in solido* against the association, and the cashier is required by the collector to pay it or be subject to a penalty. In the case of *First National Bank of Richmond,* 39 Fed. Rep. 309, (tried in this court a short time ago), the record in which case has gone to the supreme court, it was held by the district judge that such an assessment of a tax on the whole of the shares of a bank, at their market value, was nothing else than an assessment of the capital stock of the bank, and was not authorized by the act of congress, and that to tax the shares of the bank at all they must be listed in the name of the shareholder. Any other view of the law than this would work a grievous wrong to the shareholders of national banks. By the law of Virginia, every person assessed for a tax upon his personal property has a right to deduct from the valuation the amount of his indebtedness, so that he may be charged only with taxes on what he owns, when a balance is struck between him and his creditors. To assess the bank on all its shares *in solido* is to prevent entirely a shareholder therein from this benevolent and just provision of law.

The case of *First National Bank of Richmond* referred to in the extract just made, was decided against the validity of the tax by the circuit court. The appeal to this court was dismissed by the plaintiff in error (149 U. S. 769), so that the merits of the case were never presented to this court.

Another case of like character is

Brown vs. French, 80 Fed. 166.

This was an action to enjoin a county treasurer from selling certain real estate which belonged to the First National Bank of Helena, for certain taxes claimed to be due from the bank. The bank was in the hands of a receiver, who contended that the tax was illegal, because in effect an assessment upon the property of the bank and not on the shares, and further that he could not be required to pay because the bank was insolvent. The Montana statute provided for an assessment of the shares to the stockholders and for a verified statement from the cashier to aid the assessor, and that the stockholders should have a right to make the deductions and exemptions allowed by law in assessing the value of other personal property. We make the following extract from the opinion:

It is set forth in the bill that the said bank never made out a verified list of said property, but, in the latter part of June of the said year 1896, George H. Hill, then the assistant cashier of said bank, for it handed to said Bickett, as deputy assessor for said county, the following:

Capital	$800,000.00
Surplus	100,000.00
Undivided profits	94,000.00
	$994,149.01
U. S. bonds	$100,000.00
Real estate	

It is set forth, also, in the bill, that the said bank did not for the year 1896, but that the said assessor did for that

year, prepare the assessment list of property belonging to the said bank, and that he (the assessor) estimated for himself the value of the property. The assessor added the $100,000 in United States bonds, and the value of the real estate, estimated at $147,290, together, and then deducted the amount from the said $994,149.01, and then took as the value of the stock two-thirds of the amount left, which, according to the calculations of said assessor, left $497,906. For this amount the bank was assessed. The deputy, Bickett, in his affidavit claimed that this was the value of the shares of stock, and this stock was assessed to the bank.

The return, if any, of the bank was of capital. The entry of "stock" by the assessor opposite to the said sum of $497,906 would appear to also indicate capital stock, and not the value of shares of stock. There is no number of shares indicated. It is stated in the affidavits that the bank has been accustomed to make such returns for assessments for several years prior to 1896. This would not make it legal.

This assessment seems to have been made very much as the assessments were made in the case at bar. Here, as there, the entry indicates an assessment upon the property of the bank and not on the value of the shares of stock. Here, as there, no number of shares is indicated. That case decided that such an assessment is an assessment on the capital of the bank and not upon the shares of the shareholders. The court says further in the opinion:

I am unable to see how the term "capital," as returned by Hill, the assistant cashier, can be construed to mean shares of stock. There is a clear and well-understood distinction between the terms "capital" and "shares of stock." When the assessor made his computation, he found $497,906 of stock. If this meant the value of the stock, we do not have the number of shares, nor by whom held. Unless the bank owned the shares of stock, the assessor had no right to assess the same to the bank.

In

First National Bank vs. Fisher, 45 Kans. 726,

there was another assessment of the shares of a national bank *in solido,* and here again the assessment was held to be an assessment, not upon the shares, but upon the capital of the bank, and therefore void, because in contravention of the federal statutes.

Other cases to the same effect are:

National Bank of Chemung vs. City of Elmira, 53 N. Y. 49.

Sumpter County vs. National Bank of Gainesville, 62 Ala. 464.

City of Springfield vs. First National Bank, 87 Mo. 441.

First National Bank vs. Meredith, 44 Mo. 500.

National Com. Bank vs. City of Mobile, 62 Ala. 284.

National Bank vs. Hoffman, 93 Iowa 119.

The manner in which the assessments in the case at bar were made is significant in this connection. The duplicate assessment roll set out on page 9 of the transcript, covering the first assessment, shows that this assessment, which was for $55,171.98, is on account of *"moneys and credits."* The second duplicate of the assessment roll giving the assessment $122,871, is on account of *"corporation stock"* (trans. p. 11). In the assessment roll itself, which was retained by the assessor, the amount is opposite *"moneys*

and credits." On the assessment book referred to at page 14, the assessment is under the head *"moneys and credits."* On the tax list it is referred to as "taxable value of personal" (trans. page 16). It does not anywhere appear that the assessor in fact attempted to assess anything except the property of the bank, or that the tax was levied on anything else.

A case somewhat in point upon the general question that has been discussed in this section of our brief is

People ex rel. vs. Coleman, 126 N. Y. 433.

In that case the Union Trust Company was assessed by the tax commissioners of the state of New York, under a statute of that state, upon its capital stock for the year 1889. Its shares were of the par value of $100 and were worth in the market five times that much. It was assessed according to the premium value of its shares in spite of the protest and the presentation before the assessors of uncontested proof of the actual value of its capital and surplus. The assessment was sustained by the court in the first instance, but was reversed by the court of appeals and the tax cancelled. The opinion says:

The relator challenges the assessment, and through all the proceedings has persistently raised and pressed the inquiry, not so much as to the mode or manner of ascertaining value, but rather as to what is the precise thing to be valued, whether the capital stock of the company or the capital stock held in shares by the corporators. If these are the same, or, in any just sense, equivalents, either might be valued without substantial error, but if they were not such, we must determine which is to be valued before we can solve the problem of how to value it.

Now, it is certain that the two things are neither iden-

tical nor equivalents. The capital stock of a company is one thing; that of the shareholders is another and a different thing. That of the company is simply its capital, existing in money or property or both; while that of the shareholders is representative, not merely of that existing and tangible capital, but also of surplus, of dividend earning power, of franchise and the good will of an established and prosperous business.

The court says further:

And thus the two things—the company's capital stock and the shareholder's capital stock—are essentially and in every material respect different. They differ in their character, in their elements, in their ownership and in their values.

The court then refers to the confusion and trouble that have arisen because these two different things, namely the company's capital and the shareholder's stock, are denominated alike, capital stock, and quoting the section of the statute under consideration, proceeds:

There are reasons in abundance for the conclusion that by the phrase "capital stock" the statute means not the share stock, but the capital owned by the corporation; the fund required to be paid in and kept intact as the basis of the business enterprise, and the chief factor in its safety. One ample reason is derived from the fact that the tax is assessed against the corporation and upon its property, and not against the shareholders, and so upon their property. In theory, every tax is charged against some person, natural or artificial, resident or non-resident, known or unknown. It is assessed not upon property, irrespective of ownership, but against persons in respect to their property (23 N. Y. 215) and effects not merely a lien, but also a personal liability. On the assessment rolls in this case

appeared the name of the relator as the person assessed, and the amount of the tax became a charge against it. Of course, it could only be assessed and taxed in respect to its own property, that which in its corporate character it owned and possessed, and so it follows inevitably that the statute concerns the company's capital stock, that is, its real and actual capital, and not in any respect the share stock which it does not own and whose possessors have not been assessed.

Another reason is found in those terms of the statute which include and exclude respectively specific kinds or classes of property in the corporate ownership. Thus the assessment is to be laid not merely upon the capital stock of the corporation, but also upon its surplus. No such explicit direction was necessary, except upon the assumption that by the words "capital stock" was meant simply "capital," which would not include surplus, and so required that it be subjected by name to the valuation. If the share stock was meant its value would include surplus and makes its specification not only needless, but confusing. But while the statute includes surplus by specific mention, it excludes franchise by omitting it. The omission of franchise is emphasized by the careful inclusion of surplus. It is fully and definitely settled that the tax imposed by the statute is not upon the franchise. (*People vs. Comrs. of Taxes*, 2 Black 620). But if that be so, it is not upon the share stock, for that represents the value of the corporate franchise, as a part of the total of the corporate property. And so, both by what it specifically includes and silently excludes, the statute itself informs us that by "capital stock" it means and intends the company's actual capital paid in and possessed, and not at all or in any sense the share stock.

V.

The statute cannot be sustained upon the theory that it makes the bank a mere collecting agent for the state.

Referring again to *Stapylton vs. Thaggard,* 91 Fed. 53, it is there said:

As we construe the cases, from *First Nat. Bank vs. Com.,* 9 Wall. 353, to *First Nat. Bank vs. Chehalis Co.,* 166 U. S. 440, 17 Sup. Ct. 629, the bank is made to pay the taxes assessed by the state against its shareholders, when the state statutes lay such duty upon the bank, upon the theory that the shares are valuable, and that the bank has assets in its hands belonging to the shareholders from which it can recoup.

In

Bank vs. Commonwealth, 9 Wall. 353, 362,

the court, speaking through Mr. Justice Miller, says:

If the state of Kentucky had a claim against a stockholder of the bank who was a non-resident of the state, it could undoubtedly collect the claim by legal proceeding, in which the bank could be attached or garnished, and made to pay the debt out of the means of its shareholder under its control. This is, in effect, what the law of Kentucky does in regard to the tax of the state on the bank shares. It is no greater interference with the functions of the bank than any other legal proceeding to which its business operations may subject it, and it in no manner hinders it from performing all the duties of financial agent of the government.

In other words, these cases are predicated upon the proposition that the payment made by the bank is made out of the funds of the shareholder. It is one thing to say that the bank may be required to act as a collecting agent; but quite another and radically different thing to say that it shall itself pay the debt from its own property.

This distinction has been definitely recognized by the supreme court of Iowa. See

Hershire vs. First National Bank, 35 Iowa 272, 277.

That was a suit against a national bank to recover taxes levied upon its shares. There was a demurrer to the petition which was sustained. The petition contained no averment that the bank had money in its hands out of which it could make this payment, and the supreme court held that the absence of any funds in the hands of the bank belonging to the shareholder was fatal to the right of the plaintiff to recover. It says, page 277:

In brief, our view of the statute is, that it effectuates a statutory garnishment of the bank, to secure the payment of the taxes due from its shareholders. To make it liable, it must be shown that the bank now has or has had dividends or other money or property belonging to the delinquent shareholder. Whereas the Kentucky statute makes the bank liable absolutely for the taxes upon shares. If that is better than ours, it is for the legislature, and not for us to enact it here.

In this same opinion the court recognized the distinction between the shares and the capital stock of the bank, and the fact that the bank has no interest whatever in the shares. The court says on this question:

Of course, we are not here questioning or discussing the right of the banking association to retain the dividend for the purpose of paying the taxes, or of providing by rule or by-law, properly made and recorded, for the liability of the shares themselves for any indebtedness of the shareholder to the bank, or the like, so that any transfer of such shares could not affect the right of the bank as against a purchaser having notice of such by-law. All that we here intend to say is, that the shareholder himself in legal contemplation owns, controls and manages his own shares, nothing different in fact being shown. And hence, the banking association is not liable for the tax due from holders of shares in the capital stock of such banking association. Other averment and showing must be made that the shares are in fact under the control or management of the association, before it can be made liable.

Cleveland Trust Company vs. Lander, 184 U. S. 111,

is not in conflict with *Van Allen vs. The Assessors* and the long line of cases of the same class. In the *Lander* case the statute provided for taxing the shares of the shareholder. The doctrine of *Van Allen vs. The Assessors* was re-affirmed, and the question which arose under the constitution and laws of the state of Ohio was left for the determination of the supreme court of that state.

VI.

If section 1322 *requires the taxation of the shares of the shareholders to the bank, it is void, because within the inhibition of the fourteenth amendment.*

If our contention that this section as construed by the Supreme Court of Iowa in fact contemplates a tax on the property of the bank is unsound, and what it requires is a

tax upon other and distinct property, viz: The shares owned by the shareholders, as distinguished from the bank, then we assert that to tax the bank upon property which it does not own is to deprive it of its property without due process of law, and that for this reason this section and the taxes levied under it are void.

To say baldly and unequivocally that the shares, which belong to the shareholders, shall be taxed to the bank, which does not own them, and that the bank shall be required to pay these taxes without an express provision for its reimbursement, is to assert a proposition that is in violation of all established principles of taxation. If the legislature may tax the shares of the shareholder to the bank there is no reason why it cannot tax his real estate to the bank, or the real estate of anyone else to the bank.

To put this in the concrete, suppose that A owns $100,000 invested in government bonds and no other property. Can the legislature say to A that because this property is not taxable it will assess to him the property of B in an equal amount? If this were so, the state could take these bonds, exempt from taxation, to satisfy the taxes levied against A upon the property of someone else.

In the case of the bank that is plaintiff in error, suppose that A. owns ten shares of stock. Could the state under this section of the Iowa code assess this property to the bank? If so, then in the event that the bank did not pay, it might recover a judgment against it for this tax, and the property on account of which the tax was levied would not be subject to execution under this judgment to satisfy the debt, but the tax would be a lien upon the bank's real estate.

This court has held in numerous cases, including

Railroad Co. vs. Pennsylvania, 198 *U. S.* 341.

Corry vs. Baltimore, 196 U. S. 446,

that the enforcement of a tax which a state has no jurisdiction to levy constitutes a taking of property without due process of law within the prohibition of the fourteenth amendment to the constitution of the United States. Under the principle announced in these cases, the exaction of any tax which the state had not the power to impose would come within the same prohibition.

The cases referred to are cases where the state had no power to impose the tax because the property was outside of its jurisdiction, so that the question which remains for consideration here is, assuming that this statute does exact from the bank a tax upon property which it does not own, whether this is within the power of the state.

In

State Tax on Foreign-held Bonds, 15, Wall. 300, 319,

this court recognizes limitations upon the power of the state to tax. The court says:

The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, exercises, or licenses, it must relate to one of these subjects. It is not pos-

sible to conceive of any other, though applied to them, the taxation may be exercised in a great variety of ways.

Cooley on Taxation (3 *ed.*) *page* 1,

defines taxation as follows:

Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.

On page 3, the author says:
possessions, by the use to which the money contributed is

The person upon whom the demand is made, or whose property is taken, owes to the state a duty to do what shall be his just proportion toward the support of government, and the state is supposed to make adequate and full compensation, in the protection which it gives to his life, liberty and property, and in the increase to the value of his applied.

This idea of a just proportion is fundamental and is the basis of the many controversies which arise as to discrimination and lack of uniformity in taxation.

It is obvious that it would be destroyed if the assessment were based, not upon the property of the person paying the tax, but upon the property of someone else. Take the present case. Here, by reason of the fact that the bank owned exempt property, the value of its property subject to assessment was in round numbers $55,000. The value of the property of the shareholders was $122,000, more than twice

the value of the property upon which the bank was subject to taxation.

Cooley lays down on page 12 certain maxims of policy, as follows:

Writers on political economy lay down certain principles which should govern the imposition of taxes, but these are guides rather to the legislature than to the courts. The author of "Wealth of Nations" in particular has enumerated certain maxims, the subject of which may be stated as follows: 1. That the subjects of every state ought to contribute to the support of the government *as nearly as possible in proportion to the revenue which they respectively enjoy under its protection.* 2. The tax which each is to pay ought, as respects the time and manner of payment, and the sum to be paid to be certain and not arbitrary. 3. It ought to be levied at the time and in the manner in which it is most likely to be convenient to the contributor to pay it; and 4. It ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury.

Here this principle is again recognized.

On page 27, the author takes up taxes that the governments have been accustomed to levy, and describes capitation taxes, land taxes, taxes on houses, taxes on income, taxes on implements, taxes on the carriage of property, taxes on the wages of labor, taxes on servants, horses, dogs, carriages, etc., taxes on the interest of money, taxes on dividends, taxes on legacies and inheritances, taxes on sales, bills of exchange, gold and silver bullion, etc., taxes on newspapers, taxes on legal process, taxes on consumable luxuries, taxes on exports, taxes on imports, taxes on corporate franchises, taxes on the value of property, which he

says have been the main reliance of the states, and taxes on amusements.

It does not appear that any of these taxes have ever been levied with reference to the property or employment or person of someone other than the person paying the tax.

The theory of all taxes based upon value is, that the benefits received are in proportion to the value of the property owned, and therefore that the payments based on the values are equitably proportioned.

We assert that to change this method of taxation, and if it may be done in one instance, it of course may be done in any instance, is to go in direct opposition to this fundamental proposition which underlies all of our methods of taxation. Justice Field, while on the circuit, said in

County of Santa Clara vs. Southern Pac. R. Co., 18 *Fed.* 385, 392:

No one would pretend that the mortgagor should pay without such allowance the tax chargeable to the bank, nor that the bank should pay the tax chargeable to the mortgagor, except upon like condition. It would be difficult to state any principle which would justify the exaction from one of a tax leviable on the interest of the other. No power in any state has ever been asserted going to that extent, except the power to confiscate. The exaction would not be the taking of property by due process of law, even upon the theories as to what constitutes such process asserted in this case. It would be sheer spoilation by arbitrary power.

The language used is emphatic, but the emphasis is warranted by the suggestion that one person should be taxed on the property of another. Justice Field says the only

power ever asserted going to this extent is the power to confiscate; that it would be a violation of the constitutional provision which we invoke; that it would be sheer spoliation by arbitrary power.

In

United States vs. Railroad Company, 17 Wall. 322, 326,

it is said:

A tax is understood to be a charge, a pecuniary burden, for the support of government. Of all burdens imposed upon mankind that of grinding taxation is the most cruel. *It is not taxation that government should take from one the profits and gains of another.* That is taxation which compels one to pay for the support of the government from his own gains and of his own property.

Such an exaction as is in controversy here goes so far beyond the established principles which regulate taxation that it may not be even classed as a tax. It is a mere arbitrary exaction, unwarranted by any law.

In

Henkle vs. Town of Keota, 68 Iowa 334,

the Supreme Court of Iowa had under consideration the

question whether under a different law which then existed shares in a bank organized under the general incorporation laws of the state could be assessed to the shareholders. In the course of its discussion the court says at page 340:

But as we have seen, shares in the corporation are the property of the person owning them. *They cannot be taxed to the corporation,* and the statute does not so provide; but it does provide that they shall be taxed to their owners.

Here the court recognizes the lack of power to tax property to one who is not its owner.

The supreme court of Iowa was not willing in the present case to hold that the state of Iowa had the power to tax the bank upon the property which it did not own and it therefore was driven to the assertion of the doctrine of equivalency as it is set out in the opinion. It must be borne in mind, however, that this doctrine cannot be invoked in order to escape the dilemma which is presented to the defendant in error; because if the defendant in error concedes that the property taxed is in effect the property of the bank, then the bank is entitled to its deduction, because the bonds are exempt. It is only when the defendant in error denies this and asserts that what was taxed was the shares, something not the property of the bank, and that therefore the doctrine of *Van Allen vs. Assessors,* is applicable, that the question which we are now discussing is presented.

This property which is subject to this assessment was either the property of the bank or the property of the shareholders at the time the assessment was made. It cannot be treated for the purpose of preventing an exemption, as the property of the shareholder, and at the same time, for the purpose of evading the question we are now urging, as the

property of the bank. It is either one or the other; and if it is the property of the bank, it is incumbent upon the defendant in error to explain why the bank was not permitted to deduct its exempt property; and if it is the property of someone else, it is incumbent upon the defendant in error to squarely meet the question, that the state has not the power to tax to one person property owned by any other.

There is a dearth of authority upon this question, because so far as we can ascertain, neither the supreme court of Iowa nor any other court has asserted the proportion as it is presented here.

The practical result of the application of this proposition here is to more than double the taxes of the plaintiff in error. If it were taxed upon its own property it might deduct its bonds. If it is to be taxed upon the property of someone else, it can make no deductions, not even those that the owner of this property might have made.

It is unnecessary for us to defend the policy of the law in exempting these bonds from taxation through the federal constitution and statutes. It is this exemption that makes them desirable as investments, and any criticism of the investor must involve a like criticism of the law which grants the exemption and of the act of the federal congress authorizing the issuance and sale of the bonds.

If a state may assess to one property which he does not own, this exemption may be practically nullified. Any state may pass a law saying that banking and other corporations shall be taxed upon their capital where it is not invested in exempt property, and that, to the extent to which it is so invested, the shares of their stockholders shall be assessed to them.

It may enact that where a private individual owns United States bonds, he shall be taxed to the full value of these bonds, or to double their value, or to any other mul-

tiple of their value that seems proper, upon the property of some one else, exempting the property of the other, and so penalizing the ownership of exempt bonds. We do not see why, to evade double taxation, it would not be just as proper to tax to the holder of government bonds an amount equal in value of the public property as to tax to him the property of another individual.

The purpose for the enactment of this statute is obvious. The extract which we have made from *Bank vs. Rerick*, in the second subdivision of this brief, shows that where stock in a national bank is assessed to the shareholder, he has a right to deduct debts owing in good faith from the amount of the assessment. The purpose of this statute was evidently to devise a plan by which the bank should be prevented from deducting its exempt property and the shareholder should be prevented from deducting his debts. The property taxed was to be the property of the shareholder, so that the exempt property of banks could not be deducted, and the person to whom it was to be taxed was the bank, so that the debts of the shareholder could not be deducted. The statute is an attempt at evasion. It is an attempt to do by indirection what the constitution of the United States and the laws of the United Staes prohibit. It is this that has given rise to the embarrassments which confronted the supreme court of Iowa and confront the defendant in error here. It is impossible to hold that this is a tax on the property of the bank without permitting it to make the deductions which it demands. It is impossible to hold that this is a tax upon the property of someone else without asserting that there is power to tax the bank upon property which it does not own and in which it has no interest. We are indifferent which horn of the dilemma may be selected by the defendant in error. It cannot evade both of them.

VII.

The relief to which the plaintiff in error is entitled.

(a) If section 1322 as construed by the supreme court of Iowa, requires that the bank pay the taxes upon property which it does not own, the statute is void, and the entire assessment and tax based upon it is invalid. Consequently, if this theory of the case be the true one, the entire assessment in question should be set aside.

(b) If the statute contemplates an assessment upon the property of the bank, then the basis upon which the assessment should be computed, as determined by the supreme court of Iowa, is as follows: From the gross assets of the plaintiff in error, as shown by the proof, should be deducted its gross liabilities, aside from its liability on account of the capital stock, surplus and undivided profits. The balance represents the net assets of the bank, and, in the case at bar, where the capital of the bank is not impaired, is equal to the sum of the capital stock, surplus and undivided profits. From this balance should be deducted the bonds of the United States and premiums, that is, the amount invested in the bonds, and under the laws of Iowa, the other stocks, and real estate owned by the plaintiff in error. That this is the proper method of computation, see

Campbell vs. City of Centerville, 69 *Iowa* 439.

The real estate is deducted under code section 1322, and the other shares of corporation stock are deducted because under section 1325 of the code, set out in the second subdi-

vision of this brief taxes on these shares owned by the bank are to be paid by the corporation which issued them, the bank being bound to reimburse it therefor.

The corporations whose stock is included were all corporations organized under the laws of the state of Iowa, except that the Citizens National Bank was organized under the laws of the United States. Its stock, however, is to be taxed in the same manner. The assessment therefore should be upon the following basis, taking the figures from Exhibit "1," shown on page 7 of the transcript:

Capital stock	$100,000.00	
Surplus	25,000.00	
Undivided profits	9,871.98	
Total		$134,871.98
Deductions, U. S. bonds	$ 57,000.00	
Premiums on same	5,060.00	
Other stocks	4,040.00	
Real estate	8,480.00	
Total		$ 74,580.00
Balance		$ 60,291.98

If any assessment can be made against the plaintiff in error we submit it must be in the amount above stated.

The record shows that the taxes in question were paid under protest. To avoid any misapprehension as to the effect of this payment, we call attention to section 1417 of the code of Iowa, the material portion of which is as follows:

The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon.

It is established in Iowa that this authorizes the refunding of illegal or erroneous taxes, though voluntarily paid, and after they have been divided up and distributed among the state, school, road and other funds; and where the supervisors refuse to refund them, they may be recovered from the county:

Lauman vs. Des Moines County, 29 Iowa 310;
Richards vs. Wapello County, 48 Iowa 507;
Winzer vs. Burlington, 68 Iowa 279;
Thomas vs. Burlington, 69 Iowa 140;

and a suit may be brought at any time within five years after the payment is made.

Lonsdale vs. Carroll County, 105 Iowa 452.

In the case at bar, there was no way by which the tax, which is levied as an entirety, could be divided, and it was incumbent upon the plaintiff in error either to pay under protest or permit its property to go to tax sale, with the accruing penalties.

It will not be contended that this constituted a waiver of its appeal from the assessment or of its right to recover back any taxes which on the final determination of that appeal might appear to have been illegally exacted.

Respectfully submitted,

N. T. GUERNSEY,
Attorney for People's Savings Bank, Plaintiff in Error.

GEO. F. HENRY,
Attorney for Des Moines Savings Bank, Plaintiff in Error.

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAR 4 1907
JAMES H. McKENNEY,
CLERK.

Additional Brief of Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1906

NO. 82.

HOME SAVINGS BANK, PLAINTIFF IN ERROR.

vs.

THE CITY OF DES MOINES, AND THE CITY COUNCIL OF SAID CITY, AS A BOARD OF REVIEW; DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF IOWA.

HORATIO F. DALE AND WM. G. HARVISON, *Attorneys for Plaintiff in Error.*

Due and legal service hereof is hereby accepted and acknowledged at Des Moines, Iowa, this ..... day of March, A. D., 1907.

Attorneys for Defendants in Error.

ADDITIONAL BRIEF OF PLAINTIFF IN ERROR.

Plaintiff in error respectfully asks leave of Court to file the following additional brief, for the purpose of stating more specifically and clearly than was done in its original brief, the ultimate propositions involved in the FOURTH DIVISION of said Brief, and an additional point which should be added to those stated in the FIFTH DIVISION thereof, as follows:—

DIVISION 4. (ORIGINAL BRIEF, PAGE 25.)

At the date of the assessment against Plaintiff in error, there was no Act of Congress authorizing the taxation of the value of the shares of stock of State Banks, in so far as said value was derived from the investment of the capital of such Banks in United States Bonds or other securities. National Banking Acts of 1863 and 1864, the Amendment of 1868, and Rev. Stat. U. S. Section 5219.

The proposition contended for by plaintiff in error, as above stated, depends upon the true construction and interpretation of Section 41 of the National Banking Act of June 3rd 1864, as amended by the Act of February 10th 1868, and the substitute for said Section 41, incorporated in the Revised Statutes of the United States of 1875 and 1878, as Section 5219, in the light of the decisions of this Court on said subjects. We therefore set out these three Sections as follows:—

ACT OF 1864, SECTION 41, (AT THE END OF THE SECTION): *Provided,* That nothing in this Act shall be construed to prevent all the shares of any of the said Associations, held by any person or body corporate, from being included in the valuation of personal property of such person or corporation in the assessment of taxes imposed by or under State authority, at the place where such Bank is located, and not elsewhere:

(FIRST LIMITING CLAUSE): *but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State;*

Repealed in 1868

(PROVISO OR SECOND LIMITING CLAUSE): *Provided further,* THAT THE TAX SO IMPOSED UNDER THE LAWS OF ANY STATE, UPON THE SHARES OF THE ASSOCIATIONS, AUTHORIZED BY THIS ACT, SHALL NOT EXCEED THE RATE IMPOSED UPON THE SHARES OF ANY OF THE BANKS ORGANIZED UNDER AUTHORITY OF THE STATE, WHERE SUCH ASSOCIATION IS LOCATED;

There is a final clause of the Section, concerning the taxation of real estate, which we omit, as immaterial, in this case.

The only permission which Congress has ever given to the States to tax the value of the shares of stock of a State Bank derived from any United States Bonds in which the capital of such Bank, or any part thereof, is invested, is that set forth in the *Proviso or Second Limiting Clause* in said Section 41, *supra,* which was repealed in 1868, as hereinafter shown.

ACT OF 1868, AMENDING SAID SECTION 41: That the words "place where the Bank is located, and not elsewhere", in Section forty one (41) of the "Act to provide a National Currency", approved June third (3) eighteen hundred and sixty four (1864), shall be construed and held to mean the State within which the Bank is located; *and the legislature of each State may determine and direct the manner and place of taxing all the shares of National Banks located within said State, subject to the restriction that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of each State; And Provided Always,* That the shares of any National Bank owned by non-residents of any State, shall be taxed in the City or Town where said Bank is located, and not elsewhere.

As hereinafter stated, this Act of 1868 has been construed by this Court as effecting a repeal of the *Proviso or Second Limiting Clause* of Section 41 of the Act of 1864.

REV. STAT. U. S., SECTION 5219, OF 1875 AND 1878; SUBSTITUTE FOR SAID SECTION 41:—Nothing herein shall prevent all the shares in any Association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed, by authority of the State within which the Association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of National Banking Associations, located within the State, subject only to two restrictions;

(FIRST LIMTING CLAUSE, OR FIRST RESTRICTION): *that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State;*

(SECOND RESTRICTION): and that the shares of any National Banking Association owned by non-residents of any State shall be taxed in the City or Town where the Bank is located and not elsewhere.

There is a final clause, concerning the taxation of real estate, which we omit, as immaterial in this case.

THE ACTS OF 1863, 1864 AND 1868: On the subject of Taxation, this Court, in *Van Allen v. Assessors-Bank Tax Cases*, 70 U. S. (3 Wall.) 582, 18 Law 233, decided in 1866, opinion by MR. JUSTICE NELSON, said:

"The first Act providing for the organization of these National Banks, passed 26th of February, 1863, 12 Stat. 664, Ch. "58, contained no provision concerning State taxation of those "shares, but Congress reserved the right, by the last Section, at "any time 'to amend, alter or repeal the Act.' The present Act of "1864, is a re-enactment of the prior statute, with some material "amendments, of which the Section (41) concerning State taxation is one." (Page 582, Law Page 233).

In *Mercantile National Bank v. New York City*, 121 U. S. 162, 30 Law 895, decided in 1886, the opinion, written by MR. JUSTICE MATTHEWS, said:

"The National Banking Act of 1864, 13 Stat, at L. 111, *in addition to the restrictions now imposed upon the State taxation* "of National Banks, declared 'That the tax so imposed under the "'the laws of any State, upon the shares of any of the Associations "'authorized by this Act, *shall not exceed the rate imposed upon "'the shares in any of the Banks organized under the authority of "'the State* where such Association is located'. In the re-enactment of this statute in 1868, 15 Stat. at L. 34, *this proviso was "omitted.* The case of *Van Allen v. Assessors*, 70 U. S. (3 Wall.) "573, 18 Law 229, was decided under the Act of 1864 as originally enacted." (Page 148, Law Page 899.)

U. S. REV. STAT., SECTION 5219: It is plain that in the Revisions and re-enactments of the U. S. Revised Statutes of 1875 and 1878, the proviso of Section 41 of the Act of 1864, concerning the taxation of the shares of stock of State Banks, was omitted. This proviso has not been law since 1868, or at any rate since 1875.

THE PERMISSIVE EFFECTS OF THE ACTS OF 1864, 1868 AND OF REV. STAT. U. S. SECTION 5219: *The main provision* of Section 41 of the Act of 1864 permitted the State to tax the full value of the shares of stock of National Banks, in the manner provided in that section notwithstandig that a large part, or all, of such value was derived from United States Bonds owned by the Na-

tional Bank. This part of that Act has been preserved and re-enacted, without any material change, in the Act of 1868, and in said section 5219, and ever since 1864 has been and is now law.

The Proviso or *Second Limiting Clause* of Section 41 of the Act of 1864 was omitted from the Act of 1868, and from said Section 5219, and has not been law for more than 25 years. *It was this Proviso alone* which authorized the State to tax the full value of the shares of stock of Banks organized under State laws, notwithstanding that a large part, or practically all, of such value was derived from United States Bonds owned by the State Bank, and, in addition to this permission, *compelled the State to so tax the shares of stock of its own Banks, if it desired to avail itself of the permission* given by Congress to the State to tax the full value of the shares of stock of the National Banks located within its territory.

The first Limiting Clause of Section 41 of the Act of 1864 concerning other moneyed capital has been preserved and re-enacted, without change, in the Act of 1868, and in said Section 5219, and is now law.

DECISIONS UNDER THE ACT OF 1864: In *Van Allen v. Assessors,— Bank Tax Cases*, 70 U. S. (3 Wall.) 581, 18 Law 233, decided in 1866, objection was made to the State law, under which the shares of stock of a National Bank had been assessed. One claim made was that the assessment for taxation was not in conformity to Section 41 of the Act of 1864, in that no assessment of the *shares of stock* of State Banks, was provided for or required by the State Enabling Act; and the State Bank *shares* had not been assessed for taxation; but the State statute required an assessment of the *capital* of the State Bank, and the assessment had been so made.

Section 41 of the Act of 1864 is set out, in full, in the opinion in the *'Van Allen' case*, (pages 584-585, Law Pages 234-235). We have quoted this Section 41, *supra*, except the final clause relating to the taxation of realty.

The ground upon which the *'Van Allen' case* was reversed was, that the *proviso or second limiting clause*, relating to the taxation of the shares of stock of State Banks, contained near the end of Section 41 of the Act of 1864, had not been complied with. The decision is thus stated by MR. JUSTICE NELSON:

"The defect is this: One of the limitations in the Act of Con-" gress is: 'That the tax so imposed under the laws of any State, "' upon the shares of the Associations authorized by this Act, "' shall *not exceed the rate imposed upon the shares of any of the*

"'*Banks organized under the authority of the State where such* "'*association is located*'. The enabling Act of the State contains "no such limitation. The Banks of the State are taxed *upon their* "*capital*, and although the Act provides that the tax on the shares "of the National Banks shall not exceed the par value, yet, inas- "much as the *capital* of the State Banks *may consist of the bonds of* "*The United States, which are exempt from State taxation*, it is "easy to see that this tax on the capital is not an equivalent for a "tax on the shares of the stockholders." (Page 581, Law page 233).

The other points argued and decided were: (1) a denial, by plaintiff in error, that the State possessed power to authorize the taxation of National Bank shares, which contention was held bad, as based upon a misapprehension of the effect of the Act. (Pages 582-583, Law Pages 233-234; (2) a holding that the tax authorized by the Act was not upon the U. S. bonds, but on the National Bank franchises and privileges, (Page 583-585, Law Pages 234-235); (3) a holding that Congress had not conferred such authority on the States, but had only removed or waived a restriction on the State's authority to tax, (Page 585, Law Page 235); and (4) a holding that the *whole interest* of the shareholder in his shares of National or State Bank stock was taxable, without deducting the value thereof derived from investments of the Bank capital in U. S. Bonds, the Act having differentiated the shares of the stockholder from the capital of the Bank.

As to National Bank shares, this differentiation was effected by the *main provision*, contained in the first part of Section 41, authorizing State taxation of such National Bank shares, when considered in the light of other sections of the Act relating to National Bank shares; while the differentiation as to State Bank shares was effected by the *proviso or second limiting clause* in said Section, which proviso was quoted by this Court in the part of the opinion in *Van Allen v. Assessors*, heretofore set out, (Pages 585-588; Law Pages 235-236); but no reference whatever is made in the decision of the *Van Allen case*, to the phrase *'other moneyed capital'*, as , in any manner, affecting the decision of that case.

It is true, that Congress in effect authorized the taxation of the value of the shares of stock derived from the investment of the Bank capital in U. S. Securities, *as to both National and State Banks;* and had further required that the State *must tax* the shares of stock of its own corporations, in the manner prescribed, if it desired to avail itself of the *permission given by Congress for the State to tax National Bank shares.*

But all of this was done, either by the main provision, or by the proviso of Section 41, respectively relating to the taxation of the shares of stock in the different kinds of banks. The proviso, authorizing and requiring the taxation of the shares of State banks is the part of Section 41 which was repealed by the Act of 1868, previously mentioned, and *Van Allen vs. Assessors* is not an authority to sustain the taxation of State bank shares of stock, as provided in said proviso, under the subsequent Act of 1868, nor under Section 5219 of the Revised Statutes of the United States.

In the next case, *People v. Commissioners*, 71 U. S. (4 Wall) 244, 18 Law 344, decided in 1866, opinion by MR. JUSTICE NELSON, which arose under the Act of 1864 four questions were raised and disposed of, under the National Banking Act of 1864. These questions were:

(1) A claim that the shares of National Bank stock were improperly taxed at their full par value, without deducting that part of the value of the shares derived from U. S. Bonds purchased with the capital of the Bank. The holding was that the point had been adversely settled in *Van Allen v. Assessors, supra.* (Pages 255 256, Law Page 349.

(2) The same point was made as to the taxation of the full value of the shares of stock of the State Bank, without deduction of the value imparted thereto by U. S. Bonds held by the Bank. This also was held to have been disposed of by *Van Allen v. Assessors, supra.* (Pages 258-259, Law Page 350.)

(3) The deduction of U. S. Bonds from the *property of individuals*, while refusing the same deduction from the value of National Bank shares, was claimed to be in violation of the limiting clause concerning '*other moneyed capital, etc.*' This claim was held to be not well founded. The opinion said:

"The answer is, that upon a true construction of this clause of "the act, the meaning and intent of the law-makers were, that the "rate of taxation of the shares should be the same or not greater "than upon OTHER MONEYED CAPILAL WHICH IS SUBJECT OR LIA-"BLE TO TAXATION. That is, no greater proportion or percentage "of tax in the valuation of the shares should be levied than upon "other *moneyed* TAXABLE *capital in the hands of the citizens.*" (Page 256, Law Page 349).

Also: "The objection is a singular one. At the time Con-"gress enacted this rule as a limitation against discrimination, it "*was well known to that body that these securities in the hands* "*of the citizens were exempt from taxation.* It had been so held "by this court, and, for abundant caution, had passed into law." (Pages 256-257; Law Page 349.)

Also: "*The argument* founded on the objection, if it proves "anything, *proves that these securities should have been taxed in* "*the hands of individuals* to equalize the taxation, and therefore "there was error in the deduction. *This we do not suppose is* "*claimed.* But if this is not the result of the argument, then, the "other conclusion from it is, that Congress required that the com- "missioners SHOULD DEDUCT THE SECURITIES, AND, AT THE SAME "TIME INTENDED THE DEDUCTION, IF MADE SHOULD OPERATE AS "A VIOLATION OF THE RATE OF THE TAX PRESCRIBED. We dissent "from both conclusions, and think a sound construction of the "clause, and one consistent with its words and intent, is also con- "sistent with all the Acts of Congress on the subject." (Page 257, Law Pages 349-350.)

(4) The fourth objection was, that in taxing the capital and surplus profits of *Insurance Companies*, United States securities owned by the Companies were deducted, in violation of the limiting clause concerning '*other moneyed capital.* The opinion said:

"These institutions are not within the words or the contempla- "tion of Congress; but even if they were, *the answer we have al-* "*ready given* to the deduction of these securities in the assessment "of the property of individual citizens is *equally applicable to* "them". (Pages 257-258, Law Page 350.)

It will be observed that the freedom from State taxation of U. S. Securities is referred to as an *exemption*, from taxation, the Acts of Congress alluded to having been subsequently embodied in Rev. St. U. S. (1878), Section 3701, the Acts incorporated therein being set forth in the annotations following said Section.

But it was previously settled and re-affirmed in *Pollock v. Farmer's Loan & Trust Co.*, 157 U. S. 537, 39 Law 763, opinion by MR. CHIEF JUSTICE FULLER, quoted in *Plummer v. Coler*, 178 U. S. 115, 44 Law 998, opinion by MR. JUSTICE SHIRAS, cited in our original brief, (Brief Page 32), that this freedom of U. S. Securities from State taxation is a true *immunity*, arising from a *lack of power to tax*, on the part of the State, under the U. S. Constitution. This rule has been steadily adhered to by this Court since the '*Pollock*' *case*. It is very clearly stated in *Owensboro National Bank v. Owensboro*, 173 U. S. 668, 43 Law 852, opinion by MR. JUSTICE WHITE, and an extract therefrom on this point is quoted in our original brief. (Brief page 28.)

In *People v. Commissioners*, cited *supra*, a distinction is clearly drawn between property TAXABLE by the State, and that NON-TAXABLE by the State; and it is decided that U. S. Bonds in the hands of individuals, are *not taxable as 'other moneyed capital'*. In

other words, the phrase '*other moneyed capital*' which the State is required to tax, does not include *non-taxable* U. S. Bonds in the hands of individuals or insurance companies and this phrase, '*other moneyed capital*' is not a waiver, by Congress, of the immunity from State taxation of such U. S. Bonds in the hands of individual citizens or Insurance Companies, nor a permission for the State to tax such U. S. Bonds, direct or indirectly.

The case of *Lionberger v. Rouse*, 76 U. S. (9 Wall) 468, 19 Law 721, opinion by MR. JUSTICE DAVIS, was decided in 1870, but arose under the Act of 1864, prior to the Amendatory Act of 1868, the tax objected to having been assessed in the year 1867. The early part of the opinion refers to both the first limiting clause of Section 41, concerning '*other moneyed capital*', as well as to the proviso or second limiting clause relating to the taxation of State Bank shares of stock. (Page 473, Law Page 734). The complaint was that the State banks were taxed at a lower rate than the shares of stock of National banks were taxed. The decision was, that under the proviso or second limiting clause of Section 41, relating to the taxation of State bank shares of stock at a rate of taxation equivalent to the taxation of National bank shares of stock, no more was required of the State than "that it should, *as far as it had the capacity*, tax in like manner the shares of banks of issue of its own creation" (Page 476, Law Page 725.) But under the clause of the U. S. Constitution, relating to the non-impairment of the obligation of a contract, the State was without power to increase the tax on the two State banks, because of this legislative contract with the State.

It was in this condition of the statutes, and of the decisions of this Court, that the Act of 1868 was adopted.

AMENDATORY ACT OF 1868, NOW REV. ST. U. S. (1878), SECTION 5219: In the Act of Congress, approved Feb. 10th, 1868, (15 St. at L. 34, Ch. 7,) Section 41 of the Act of 1864 was re-written. The new act retained, with no substantial change, the *main provision* authorizing taxation, by the State, of the shares of Stock of National Banks, the assessment of the shares of non-resident owners to be made in the city or town where the Bank is located; re-enacted the *limiting clause* "THAT THE TAXATION SHALL "NOT BE AT A GREATER RATE THAN IS ASSESSED UPON OTHER "MONEYED CAPITAL IN THE HANDS OF INDIVIDUAL CITIZENS OF "SUCH STATE"; but *repealed* the proviso or second limiting clause requiring a rate of taxation of the shares of State bank stock equivalent to, or greater than, the rate of taxation assessed upon National bank shares of stock. The re-enactment appears now as Rev. Stat. U. S. Sec. 5219.

OTHER MONEYED CAPITAL: The leading case, concerning the meaning of this phrase, is *Mercantile National Bank v. New York City*, 121 U. S. 162, 30 Law 895, opinion by MR. JUSTICE MATTHEWS, where different specified classes of property were exempted from taxation, or had not been subjected to taxation, by the State of New York, all of which was claimed to be in violation of the '*other moneyed capital*' limiting clause of said Section 5219.

In reviewing this *Mercantile Nat. Bank* case, it must be remembered that it was decided upon consideration of the repeal, by the Act of 1868, of the proviso or second limiting clause contained in Section 41 of the Act of 1864, concerning the taxation of the shares of stock of State Banks. This change of the law is expressly referred to in this opinion, and the part of the opinion, so stating, has been heretofore quoted in this brief, *supra*.

This case reviews *Van Allen vs. Assessors, People vs. Commissioners, Lionberger vs. Rouse*, cited *supra*, and all cases on that subject decided by this Court, prior to the *Mercantile National Bank* case. It is therefore unnecessary to refer to such intermediate cases, except as commented on in that opinion.

The *Mercantile National Bank* opinion shows that this phrase must be considered in relation to two entirely distinct classes of property, viz:

1. Property *which is not subject to taxation* by the State.
2. Property *which is subject to taxation* by the State

1. PROPERTY NOT SUBJECT TO TAXATION BY THE STATE. The opinion in the *Mercantile National Bank* case stated, concerning the decision in *People v. Commissioners*, that a deduction of U. S. Bonds, from the assessment of property owned respectively by individuals and insurance companies, was there held to be authorized although such deduction was not permitted in the assessment of National Bank shares, under the act of 1864, so far as the value of said shares were derived from U. S. Bonds owned by the National Bank, and the latter opinion quoted from the first opinion, part of which has been previously set out in this brief.

The *Mercantile National Bank* opinion thereon said:

"The court then, (in *People v. Commissioners*), proceeded "to show that the exclusion, as the subject of taxation, of govern- "ment securities held by individuals, from their *moneyed capital*, " was by authority of the United States, and hence it would be a "contradiction to infer that Congress meant to include govern- "ment securities as a part of that *moneyed capital* which is required "to be taxed by the States at a rate equal to that imposed by the

"latter upon the shares held by individuals of National Bank "stock". (Pages 149-150, Law Page 899).

The opinion in the *Mercantile National Bank* case again referred to the opinions in *Van Allen v. Assessors* and *People v. Commissioners,* and concerning the *'Van Allen'* case, said;

"In the valuation of the capital of State Banks for this taxation, "*non- taxable securities of the United States were necessarily ex-* "*cluded*", * although "the effect of this was of course to discrim- "inate to a very important extent in favor of investments in State "Banks". (Page 152, Law Page 900). The opinion also said, "further referring to *People v. Commissioners*: "It was held that "the exemption, under State authority of United States securi- "ties, *which it was not lawful for the State to tax,* could not be "considered an unwarranted exemption in that case". (Pages 152-153; Pages 900-901).

The *Mercantile National Bank* opinion further referred to the non-taxation by the State, of Municipal Bonds of the City of New York. Such bonds were issued under authority of the State, and were declared to be a means of carrying on the State government, *non-taxable* by the United States, and said:

"Such securities undoubtedly represent *'moneyed capital'*, but "as from their nature they are *not ordinarily the subjects of tax-* "*ation,* they are not within the reason of the rule established by "Congress for the taxation of National Bank shares." Page 161-162, Law Page 904).

The *Mercantile National Bank* opinion also referred to the non-taxation, by the State, of corporate shares of stock, issued by corporations of other States, and held by individuals in the State of New York. The Courts of New York had decided that such shares had no *situs* for taxation in the State of New York. The opinion said:

"The objection would be equally good if made to the non-tax "ation of *real estate* owned by citizens of New York, *but not with-* "*in its limits.* Clearly the property to be taxed under the rule pre- "scribed for the taxation of National Bank shares, *must be prop-* "*erty which,* according to the law of the State, *is the subject of* "*taxation within its jurisdiction*". (Page 162, Law Page 904).

(2). PROPERTY WHICH IS SUBJECT TO TAXATION BY THE STATE

The subjects, within the power of the State to tax, which are considered in the *Mercantile National Bank* opinion, can be arranged in two groups of which some are, and others are not, *other moneyed capital,* within the meaning of Section 5219, as follows:

Moneyed capital which is not considered other moneyed capital within the meaning of Section 5219.

(A.) Capital employed in certain businesses which do not come into competition with the business of National Banks. The capital so employed is *'not other moneyed capital'* within the meaning of Section 5219. This includes trading, manufacturing, mining, railroad and industrial enterprises, and a number of miscellaneous businesses. (Opinion Pages 154 to 156, Law Pages 901-902).

(B.) Capital employed by corporations, as they are not 'individual citizens of such State', and their capital is *'not other moneyed capital'* within the meaning of Section 5219. (Opinion Page 156, Law Page 902). The opinion stated that corporations of the description above referred to in Paragraph 'A', "may have "a large part of its capital invested in securities payable in money "and so may be the owners of *moneyed capital;* but as we have al- "ready seen, the shares of stock in such companies held by indi- "viduals are *not moneyed capital*". (Page 156, Law Page 902).

(C.) Capital invested in real or personal property, as destinguished from *'moneyed capital* to be invested in securities by way of loan, discount, etc., to be again reduced to money, and again reinvested, etc. (Opinion Page 157, Law Page 902).

(D.) Capital which, for sound and adequate reasons of State policy, and withing reasonable limits, has been exempted from taxation by the State, (Opinion Page 149), although it would otherwise be *'moneyed capital'* within the meaning of Section 5219.

This includes an exemption of 'all mortgages, judgments, 'recognizances, and money owing upon articles of agreement for 'the sale of real estate', as adjudged in *Hepburn v. School Directors,* 90 U. S. (3 Wall) 480, 23 Law 112. opinion by MR. CHIEF JUSTICE WAITE; *Mercantile National Bank* opinion, Page 150, Law Page 900).

It also includes an exemption of interest-bearing bonds issued by a municipal corporation, the City of Nashville, which bonds were in the hand of individuals, as adjudged in *Adams v. Nashville,* 95 U. S. 16, 24 Law 369, opinion by MR. JUSTICE HUNT. The *'Adams'* case gives as proper exemption, the ordinary homestead in real estate, and numerous items of personal property. (*Mercantile National Bank* opinion, Page 151, Law Page 900).

It also includes deposits in Savings Banks, not formed for pecuniary profit, but organized as those of the State of New York which were considered in the *Mercantile National Bank* case, where the object of the law was to promote the accumulation of small savings belonging to the industrious and thrifty. These deposits

were *moneyed capital* in the hands of individuals, but when thus exempted by State law they were *not 'other moneyed capital'* within the meaning of Section 5219. (Page 160-161, Law Page 903-904).

The limit of State exemptions of *moneyed capital*, so as not to be in violation of Section 5219, is thus stated: "The only limita-" tions, upon deliberate reflection, we now think it necessary to " add, is that that these exemptions should be founded upon just " reason, and not operate as unfriendly discrimination against in-" vestments in National Bank shares". (Opinion Page 161, Law Page 903-904).

This limitation was transcended by the State of Pennsylvania under the facts stated in *Boyer v. Boyer*, 113 U. S. 689, 28 Law 1089, opinion by *Mr. Justice Harlan*, which is referred to in the *Mercantile National Bank* case. (Opinion Page 147, Law Page 898).

Moneyed capital which is considered 'other moneyed capital' within the meaning of Section 5219.

The *Mercantile National Bank* opinion stated, that New York Loan and Trust Companies were assessed, for *local purposes*, upon the actual value of their capital stock, less the value of their real estate, and *less their non-taxable securities, including U. S. Bonds.* In addition, there was imposed upon such Companies a franchise tax, in the nature of an income tax, *payable to the State.* The opinion said:

"They receive money on deposit, it is true, and invest it in " loans, and so deal, therefore, in money, and securities for money, " in such a way as properly to bring the shares of stock held by " individuals therein, within the definition of *'moneyed capital in the hands of individuals'*, as used in the Act of Congress."

Also:—"It is evident, we think, that taxation in this mode is, " at least, *equal to that upon the shares of individual stockholders,* " for if the same property was held for the same uses and taxed by " the same rule, in the hands of individuals, *as moneyed capital*, it " would be subject to precisely the *same deductions*, in addition " to which, the individual would be entitled to make a *further de-" duction* of any debts he might owe. Upon these grounds, therefore " we are of opinion that this mode of taxing Trust Companies does " not create the inequality which the appellant alleges." (Page 158-159; Law Pages 902-903).

In the *Mercantile National Bank* case, aside from the deposits received and the investments thereof made by way of loans and discounts, by the New York Loan & Trust Companies, there was

not, in the record before the Court, any specific subject-matter of taxation, which was adjudged to be *'other moneyed capital'* within the meaning of Section 5219.

There is a sufficiently full, and accurate general definition, for the purposes of *'Mercantile National Bank'* case, as to what constitutes a *banking business,* from which the deduction is drawn and clearly laid down, that *'moneyed capital'*, employed in the banking business of a State Bank, does come into competition with the banking business of a National Bank, and it was this *competitive moneyed capital* used by the State Bank, which Congress intended to reach, direct or through the shares of stock of said State Bank, by its enactment concerning *'other moneyed capital'*. But whether any particular investment, or class of investments other than the Loan and Trust companies capital and business, was included in the term *'moneyed capital'*, within the meaning of Section 5219, or was used in the banking business, within the meaning of that opinion, was not presented by the record in that case, and was therefore, not decided. The *Mercantile National Bank* opinion is almost wholly negative determining what is *not 'other moneyed capital'* within the meaning of Section 5219, because of the nature of the matter presented for consideration by the record.

It is settled law that the principles announced by this Court must be considered in the light of the facts before the Court in the particular case. "It is a general rule, expressly recognized by the "Court in *Sturges v. Crowninshield,* that the positive authority "of a decision is *co-extensive only with the facts* on which it is "made", as stated by MR. CHIEF JUSTICE MARSHALL in *Ogden v. Saunders,* 25 U. S. (12 Wheat) 333, 6 Law 647. Re-assertions of the foregoing rule, have been made by this court, over and over again.

As we understand the *Mercantile National Bank* case, the only subjects of taxation which are considered *'other moneyed capital'* of a State Bank, within the meaning of Section 5219, is the taxable capital of the State Bank, or the beneficial interest or ownership, (through the shares of stock of such State Bank, which shares are in the hands of individual citizens), in or of the *taxable* capital of said State Bank, or the *taxable* investments thereof; and that the ownership of, or the benefical interest or ownership, through the shares of stock, in or of *non-taxable* securities of the United States, is not *'moneyed capital'* within the meaning of Section 5219.

CASES SUBSEQUENT TO THE MERCANTILE NATIONAL BANK CASE: We fail to discover any case decided by this Court, subsequent to the *Mercantile National Bank* case, which tends in any manner to establish that the words *'other moneyed capital'* in Section

5219, confer upon the State, the power to tax *non-taxable* objects, such as Securities of the United States, or that this phrase has ever been adjudged to give to the State the permissive right of taxing United States securities, directly or indirectly.

All subsequent cases decided by this Court, that we have found relate to the taxation, as *'other moneyed capital'*, of objects or subjects matter, which were undoubtedly within the power of the State to tax, but were exempted from taxation under State laws, or were not taxed at all, or were taxed at a less rate, under State laws.

The principal of these cases are *National Newark Banking Co. v. City of Newark*, 121 U. S. 163, 30 Law 904, opinion by MR. JUSTICE MATTHEWS; *Davenport National Bank v. Davenport*, 123 U. S. 83, 31 Law 94, opinion by MR. JUSTICE MILLER; *Bank of Redemption v. Boston*, 125 U. S. 60, 31 Law 689, opinion by MR. JUSTICE MATTHEWS: *First National Bank (Garnet) v. Ayers*, 160 U. S. 664, 40 Law 574, opinion by MR. JUSTICE PECKHAM; *Aberdeen Bank v. Chehlis County*, 166 U. S. 443, 41 Law 1072, opinion by MR. JUSTICE SHIRAS; *National Bank of Commerce, (Seattle) v. City of Seattle*, 166 U. S. 463, 41 Law 1079, opinion by MR. JUSTICE SHIRAS; *First National Bank of (Wellington) v. Chapman*, 173 U. S. 211, 43 Law 671, opinion by MR. JUSTICE PECKHAM; *Jenkins v. Neff*, 186 U. S. 231, 46 Law 1141, opinion by MR. JUSTICE BREWER; *San Francisco v. Dodge*, 197 U. S. 78, 49 Law 672, opinion by MR. JUSTICE WHITE.

The case of *Jenkins v. Neff*, 186 U. S. 231, 46 Law 1141, cited *supra*, involved the rate of taxation of New York Loan & Trust Companies, under the *'other moneyed capital'* limitation of Section 5219, as compared with the rate of taxation assessed upon the shares of stock of National Banks. It contains an extract from the opinion of the State Court, written by MR. JUSTICE WOODWARD, which, in general, this Court approved. The opinion by *Woodward, J.*, clearly keeps in view the distinction between capital invested in *taxable property*, and that invested in property which is *immune or exempt* from taxation.

It should be noted that in *San Francisco v. Dodge*, 197 U. S. 78, 49 Law 672, cited *supra*, and the cases therein cited, it is held that it is no longer necessary for the State to tax the shares of stock of a State Bank, but the State tax may be imposed upon the franchises, good will and capital, or the investments of the capital of the State Bank, so far as subject to taxation by the State or upon the shares of stock, so far as subject to taxation by the State.

CONCLUSIONS DEDUCIBLE FROM THE ACTS OF CONGRESS AND THE DECISIONS OF THIS COURT: The conclusions which we claim are to be deduced from the Acts of Congress and the decisions of this Court, previously referred to, are as follows:

Section 41 of the Act of 1864:

(A.) The right of the State to tax the *full value* of the shares of stock of *National Banks*, without regard to that in which the capital of the Bank is invested, is derived from the MAIN CLAUSE of Section 41 of the Act of 1864, substantially re-enacted in the Act of 1868, which now appears as Rev. St. U. S., Section 5219, as determined by this Court in *Van Allen v. Assessors*, and subsequent cases decided under said Acts and Statute. On this point the authority of the *'Van Allen'* case remains in full force without change.

(B.) The right and obligation of the State to tax the *full value* of the shares of stock of *State Banks*, without regard to that in which the capital of the Bank was invested, was derived from the PROVISO or second limiting clause of Section 41 of the Act of 1864, as determined by this Court in *Van Allen v. Assessors*, and the subsequent cases decided under the same act. But this proviso was repealed and not re-enacted in 1868, and *Van Allen v. Assessors* and such subsequent cases, based upon said proviso, are no longer law, nor are they authority, *as to State Banks*, in construcing the Act of 1868, (Section 5219).

(C.) The Act of 1868 having been adopted after the proviso or second limiting clause, concerning the taxation of the shares of stock of State Bank had been construed and applied by this Court, the presumption is that the change of statute was intended to make a change in the law; that the policy of Congress, as to shares of stock of State Banks, evidenced by the Act of 1864, was itself changed; and that the Act of 1868, enacted a different policy, as to the shares of stock of State Banks, from the policy declared, on the same subject, by the Act of 1864. The proviso would have been substantially re-enacted, if the same policy was intended to be retained; but it was repealed, instead of being re-enacted.

It is impossible to believe that Congress intended to maintain the policy as to the taxation of shares of stock of State Banks, declared in the proviso of said Section 41, and yet repealed the clear declaration of said policy contained in said proviso, after its meaning and construction had been established and made unquestionable by the decisions of this Court, thus leaving its intention to continue the same policy to be deduced from such a vague and indefinite phrase as *'other moneyed capital'*. That this phrase is ambiguous

indefinite, vague and uncertain, is clearly shown by the opinion rendered in the Mercantile National Bank case, *supra.* The continuance of the same policy, on the part of Congress, is rendered more improbable, because this particular phrase was not considered or relied on by this Court, in *Van Allen v. Assessors, supra,* in adjndging that the State had the right to assess the *full value* of the shares of stock of *State* Banks, without regard to that in which the capital of the State Bank was invested.

The proposition that a change of law and policy is presumed from a change of statute, is stated and authorities thereon cited in 1 Fed. Statutes Annotated, (1903 edition). Pages CIX-CXX, Subdiv. 32.

The Clause concerning 'other moneyed capital etc.,

(D.) In no case decided by this Court, has it been held that the phrase *'other moneyed capital'* included any subject-matter of taxation IMMUNE from taxation under the U. S. Constitution, nor any subject-matter of taxation PROPERLY EXEMPTED from taxation under the Statutes of the United States, or the Statutes of any State. On the other hand, the decisions of this Court have all been the other way. Whenever and wherever United States Bonds or Securities have been considered, in connection with the phrase *'other moneyed capital',* the statement has been made that they were *non-taxable,* or were *necessarily deducted, necessarily excluded* or other equivalent phraseology. And the same rule has been applied to subjects-matter of taxation *properly exempted* by the State.

(E.) The capital of a Bank, when, and while invested in U. S. Securities, is thereby withdrawn from all *active operations of banking,* such as loaning, discounting, selling and effecting exchanges, etc., and is in reality and in its effect a loan of that amount to the U. S. Government, which loan continues so long as the Bank remains a creditor of the Government, as the owner of such U. S. Bonds or other Securities. It is only the capital which is not invested in U. S. Securities, which is employed in the *active banking operations.*

In so far as the object of Congress was to secure like or greater taxation of the capital or shares of stock of the State Bank, *actually used in active banking operations,* or the beneficial ownership of said State Bank capital through the shares of stock of said State Bank, compared with the rate of taxation imposed by the State upon the shares of stock in National Banks, this result is fully attained by subjecting to State taxation all of the State Bank capital *actually used in active banking operations,* and actually

competitive with the National banking business, exclusive of U. S. Securities, or the beneficial ownership through the shares of stock of the State Bank capital, thus actively employed, without including the value thereof derived from the investment of other capital of the State Bank in said U. S. Securities. The difference in the valuation of National Bank stock thus subjected to taxation, is a payment made by the National Bank, or a burden imposed on the National Bank, under the authority of Congress, in consideration for the special privileges and benefits conferred by Congress upon National Banks, which are thus submitted, to a limited extent, to that taxation, by the State, by and under the affirmative permission of Congress. State Banks have no such right or privilege derived from Congress.

(F.) Under the Act of 1868, or under Section 5219, the State tax may be imposed either upon the franchises, goodwill, and capital of the *State Bank*, or upon the shares of stock of said Bank, in the hands of stockholders, without violating said Act or Statute. But if the tax is imposed upon the franchises, goodwill and capital of the State Bank, the *non-taxable U. S. Bonds must be deducted*, and only the property and rights *taxable* by the State,—that is the franchises, goodwill and *taxable* capital or the *taxable* investments of the capital of the State Bank,—are required to be assessed, so that the method of assessment and the rate per cent or specific rate of taxation does not discriminate against the National Bank shares of stock. An equal tax upon State Bank shares of stock, exclusive of the value imparted thereto by U. S. Bonds owned by the Bank, is the equivalent of such taxation of the State Bank, taxable franchises, goodwill and capital or its investments, less *non-taxable* U. S. Securities, and is all that is now required.

THE REMAINING ELEMENT OF THE LIMITING CLAUSE OF SECTION 5219:

It will be readily observed that the limiting clause of the Act of 1868, now Rev. St. U. S. (1878), Section 5219, consists of two distinct parts or elements:

1: *The rate of taxation.*

2: The *property* designated as *'other moneyed capital'*.

We have already discussed the phrase, *'other moneyed capital'*. It is our contention that the provision on the subject of the *rate of taxation* has no bearing upon the question of an alleged permissive authority given by Congress to the State to tax the beneficial interest in U. S. Securities, owned by a State Bank, held by the stockholders through the shares of stock of the Bank, and will therefore dispose of this contention as briefly as possible.

It will be seen, at once, that, if such part of the value of the shares of stock of a State Bank as is derived from the investment of any of the capital of the Bank in Federal Securities, is *immune*, to that extent, under the U. S. Constitution, from taxation by the State, there being no Act of Congress permitting the taxation of such value, then such value could not be taxed by the State, at any rate per cent, or by any specific tax, or under any method of valuation or assessment, the State might adopt.

1. THE RATE OF TAXATION INCLUDES:

(A.) The rate per cent upon the assessed valuation, or the rate of specific taxation, as the tax may be *ad valorem* or specific.

(B.) The true real value of the shares to be assessed *ad valorem* or the number and value of the shares subject to specific taxation, less any deductions allowed therefrom, as exemptions, offsets of debts, or otherwise.

(C.) The amount of the tax, so ascertained, less any deductions or offsets allowed from said tax.

Alleged discriminations, in each of these respects, except possibly that part of the one marked, (C), deductions or offsets from the amount of the tax so ascertained by computation, have been before this Court repeatedly, and where a real discrimination against National Bank shares was established, it was held to be a violation of the rate of taxation required by Section 5219.

While not in connection with a National Bank, there is a case, recently decided by this Court entitled *New York ex rel., v. Tax Commissioners, (N. Y.)*, 199 U. S. 45-46, 50 Law 78-79, opinion by MR. JUSTICE BREWER, which cited *Herrwagen v. Crosstown St. Ry. Co.*, 179 N. Y., 99, where the deduction was made from the tax levied, and not from the assessed valuation upon or against which the levy was made.

An equal rate of taxation upon unequal valuations has been frequently condemned by this Court. Several cases deciding that point are cited in the *Mercantile National Bank* case, 121 U. S. 15, 30 Law 900, including *People v. Weaver*, 100 U. S. 539, 25 Law 705.

It is manifest, as a matter of common arithmetical computation, that the amount of an *ad valorem* tax assessed upon shares of stock is composed of two factors, viz: the rate per cent of the tax multiplied by the valuation of the shares to be taxed; or in case of a specific tax, the rate of specific taxation multiplied by the number of the shares subjected to said tax.

In either case, if the true or real value of the shares is established, either by proof or presumption, the proportion which the tax bears to the established value can be determined; or the tax, in either case, can be reduced to a percentage basis, and then it can be easily determined whether there is a greater rate of taxation of the shares of stock of a National Bank than upon '*other moneyed capital*' subject to taxation by the State.

In *Bell's Gap R. R. v. Pennsylvania*, 134 U. S. 239, 33 Law 895, MR. JUSTICE BRADLEY, speaking for the Court said: "The presumption is that corporate securities are worth their face value." It would seem that the same presumption must obtain as to the shares of stock of Banks organized under the National Banking Act, or under the laws of Iowa, since such Banks, organized under either law, must have the capital subscribed actually paid in, in lawful money, must make periodical sworn reports, are subject to periodical inspections, must make good any impairment of capital, and are liable to be placed in the hands of a receiver, if the impaired capital is not restored. And the same reason and rule would apply to all Banks organized under similar laws of other States.

In case this presumption does not prevail, it is, then certainly incumbent upon any one claiming a discrimination, to furnish the proof of values necessary to establish the same, and it may be safely assumed, that this Court would have to be placed in possession of such proof, before it could determine whether or not there had been a material discrimination against the shares of stock of National Banks.

There may be a difference in the method of making the assessment, such as taxation of the *property* of State corporations, and of the *shares of stock* of National Banks, or a specific tax on State Bank shares and an *ad valorem*, assessment of National Bank shares, or *vice versa*. But it is settled law that Section 5219 does "not require the States, in taxing their own corporations, to con-"form to the system of taxing National Banks upon the shares "of their stock in the hands of their owners". *San Francisco National Bank v. Dodge*, 197 U. S. 78, 49 Law 674, (opinion by MR JUSTICE WHITE.)

In the same case, it is also held, that the prohibition or limitation of Section 5219, avoids any method of assessment or taxation which discriminates against National Banks, as well as any system which in its practical execution produces an actual and material discrimination against National Banks, (Pages 78-79, Law Page 674).

In all such cases of discrimination, there is established no assessment at all, or a lower assessment of other property, proportionate to its real value, compared with the assessment made upon the shares of stock of National Banks, or no tax, or a lower percentage of tax, levied on said property than is levied upon shares of stock of National Banks, or both. But in making the comparison the standard is invariably the rate of State taxation upon *property subject to taxation* by the State, in contrast with the rate of State taxation upon or against shares of stock of National Banks.

THE RULE OF CONSTRUCTION APPLICABLE TO THE ACT OF 1868 AND SECTION 5219 OF THE NATIONAL BANKING ACT:

The State has NO POWER, directly or indirectly, to tax Federal Securities under the U. S. Constitution. Congress, by affirmative permissive legislation, may authorize such taxation by the State.

In the *'Van Allen'* (3 Wall) case, it was claimed that Congress did not possess the power to confer upon the State an authority expressly delegated to Congress by the Constitution. The opinion said: "But as it respects a subject matter over which Congress "and the States may exercise a *concurrent* power, but from the "exercise of which Congress, by reason of its paramount authority, "may exclude the States, there is no doubt Congress may with-"hold the exercise of that authority, and leave the States free to act." (Page 585, Law Page 235).

The permission for the State to tax this immune property, is not, therefore, technically a grant of power by a paramount Sovereign to a grantee or beneficiary, but it is in the nature of such a grant, and should be governed by the same rule, viz: that all such grants by a paramount Sovereignty, representing the public or the people as a whole, should be strictly construed against the grantee or beneficiary, and such grant will not be implied but must must be granted in express terms or by necessary implications from the terms expressed, and, in case of doubt the grant will be denied.

It is undeniable that before the Act of 1864 was passed by Congress, the State had *no power* to tax immune objects; after the Act was passed the State *did have such power*, to the extent provided in the Act, and the same construction should be given to the Act as if it were a grant of power by the paramount Sovereignty to the State as a beneficiary.

Concerning the sovereign grant of powers to a corporation, in *Jenkins v. Neff*, 186 U. S. 234, 46 Law 1142, opinion by MR. JUSTICE BREWER, this Court has said: "A grant of corporate life or

"corporate power is not made by implication, and the same rule "obtains in respect to the matter of recognition. If the language "of the legislature is satisfied, has full scope and effect, without "reading into it either a grant or a recognition of corporate life "or power, neither will be implied,"

In the recent case of *New York ex rel. v. Tax Commissioners*, 199 U. S. 36-37, 50 Law 75, opinion by MR. JUSTICE BREWER, after stating that an exemption from taxation under legislative authority "must be plainly and unmistakably granted; it cannot "exist by implication only; a doubt is fatal to the claim," the opinion then proceeded to say: "This rule is akin to, if not part "of, the broad proposition, now universally accepted, that in grants "from the public nothing passes by implication."

This rule while limited in the cited case, of *Jenkins v. Neff* to a grant of corporate life or power, is a general rule applicable to a grant of beneficial rights or property by a paramount Sovereignty. It is frequently expressed as a strict construction against the grantee or beneficiary and in favor of the paramount Sovereignty, and the rule has been established for the benefit of the general public, who are represented by the paramount Sovereignty. The rule and numerous authorities applying it are cited in 1 Federal Statutes Annotated, (1903 ed), Pages CVII, CVIII and CIX, subdiv. (h).

Aside from the uncertainty of the meaning of the phrase *'other moneyed capital'*, there are special reasons why the right of the State to tax subjects-matter, IMMUNE from taxation under the United States Constitution, should receive the strict construction above referred to in their application to the Act of 1868, now Section 5219.

It will be readily observed that by the language of the statute and under the decisions of this Court construing the statute, there is a well fixed limitation as to the power of the State to tax the shares of stock of National Banks. This limitation is that the tax on the National Bank shares shall not be greater than the tax imposed by the State upon *'other moneyed capital'*, whatever meaning that phrase is adjudged to have. The limitation however, is clear and emphatic.

But if the phrase, *'other moneyed capital'*, is held to include U. S. Securities in which the capital of the State Bank has been invested, or the beneficial ownership through the shares of stock of such U. S. Securities, it is manifest that an UNLIMITED POWER of taxation of such securities directly or indirectly, in the hands of the *State Banks* or beneficially owned through the shares of

stock by the shareholders of the State Banks, is given to the State.

There is no limitation imposed upon the taxing powers of the State over the capital or shares of stock of a State Bank, in the clause concerning *'other moneyed capital'*. It is true this is a limiting clause, but limiting *only* as to the rate of taxation, which may be imposed upon the shares of stock of National Banks, and it contains no limitation whatever as to the taxation which may be imposed upon State Banks.

There is nothing in that clause, that we can discover, that would in any manner prevent or prohibit the State from taxing a given rate, (for instance, 1 per cent) upon the par value of the shares of stock of both State and National Banks, and *then providing*, by way of illustration, that in case the State Bank owned any U. S. Bonds, that then the rate of taxation upon its aggregate valuation for taxation, or upon the part invested in U. S. Bonds should be two or three or any number of times greater, than the same tax imposed upon a State Bank which did not own any U. S. Securities. We do not believe that Congress intended to give to the State any such unlimited powers over State Banks, or the shares of stock thereof, where the capital or any part of the capital was invested in U. S. Securities.

The power to tax implies the power to destroy. It has been repeatedly held by this Court that the power to tax, unless controlled or limited by some Constitutional provision, implies the power to destroy. *Providence Bank vs. Billings*, 29 U. S. (4 Pet) 560, 7 Law 955; *Bank of Commerce v. New York*, 67 U. S. (2 Black) 630 631, 17 Law 541; *Fairbank v. U. S.*, 181 U. S. 291, 45 Law 866. It was by virtue of the use of this Federal Power of taxation that the circulation, as money of State Bank notes, was destroyed by the Federal tax imposed thereon. *Veazie Bank v. Fenno*, 75 U. S. (8 Wall) 533, 19 Law 482.

It is for this reason that United States property, franchises, instrumentalities, operations, securities, etc., are held to be IMMUNE from State taxation; and State property, franchises, instrumentalities, operations and securities are held to be IMMUNE from Federal taxation. *Plummer v. Coler*, 178 U. S. 118, 44 Law 1002;

Mercantile Bank v. New York, 121 U. S. 138, 20 Law 895;

Pollock v. Farmers Loan & Trust Co., 157 U. S. 429, 583, 39, Law 759, 820.

Owensboro National Bank v. Owensboro, 173 U. S. 699, 43 Law 852.

THE POLICY OF CONGRESS IS CONTROLLING, IN CONSTRUING SECTION 5219

In *Mercantile Nat. Bank v. New York City*, 121 U. S. 154, 30 Law 401, previously referred to, the opinion said: "The key "to the proper interpretation of the Act of Congress is its policy "and purpose."

But Section 5219 is but a part of the National Banking Act, and that Act itself was only a part of the gigantic fiscal or financial operations undertaken by Congress, wherein the Constitutional powers of Congress were stretched to the limit, such extensive financial plans having been made necessary by the Civil War, raging during the whole period of the enactment of the various Acts of Congress adopted for the purpose of carrying into effect the financial policy adopted for carrying on the War.

The primary object and policy of Congress in adopting these measures must control in so far as it may effect or conflict with the subordinate, although important part, of the fiscal plans of the Federal Legislative body, embodied in Section 5219, and in the prior Acts of Congress on the same subject.

We will therefore outline the measures of Congress, and state the primary controlling object and purpose of their passage, as affecting the construction and interpretation to be given to Section 5219.

THE FINANCIAL SITUATION EXISTING DURING THE WAR OF THE REBELLION: The financial situation which the Government of the United States had to meet by its measures, from 1861 to 1865, and subsequent thereto is best stated in the language of this Court, used in the majority opinion written by MR. JUSTICE STRONG, in *Knox vs. Lee-Legal Tender Cases* rendered in 1870, 79 U. S. (12 Wall) 540-541, 20 Law, Pages 308-309, as follows:

"We do not propose to dilate at length upon the circumstances "in which the country was placed, when Congress February 25th "1862 attempted to make treasury notes a legal tender. They are "of too recent occurrence to justify enlarged description. Suffice "it to say that a civil war was then raging which seriously threat- "ened the overthrow of the government and the destruction of the "Constitution itself. It demanded the equipment and support of "large armies and navies, *and the employment of money to an ex-* "*tent beyond the capacity of all ordinary sources of supply.* Mean- "while the public treasury was nearly empty, and the credit of the "government, if not stretched to its utmost tension, had become "nearly exhausted. *Moneyed institutions had advanced largely* "*of their means, and more could not be expected of them. They*

" *had been compelled to suspend specie payments.* Taxation was " inadequate to pay even the interest on the debt already incurred, " and it was impossible to await the income of additional taxes. " *The necessity was immediate and pressing.* The army was un- " paid. There was then due to the soldiers in the field nearly a " score of millions of dollars. The requisitions from the War and " Navy Departments for supplies exceeded fifty millions, and the " current expenditure was over one million per day. The entire " amount of coin in the country, including that in private hands, " as well as that in banking institutions, was insufficient to supply " the need of the government three months, had it all been poured " into the treasury. *Foreign credit we had none.* We say nothing " of the overhanging paralysis of trade, and of business generally " which threatened loss of confidence in the ability of the govern- " ment to maintain its continued existence, and therewith the com- " plete destruction of all remaining national credit."

"It was at such a time and in such circumstances the Congress " was called upon to devise means for maintaining the army and " navy, for securing the large supplies of money needed, and in- " deed, for the preservation of the government created by the Con- " stitution. It was at such a time and in such an emergency that " the legal tender acts were passed. Now, if it were certain that " nothing else would have supplied the absolute necessities of the " treasury, that nothing else would have enabled the government " to maintain its armies and navy, that nothing else would have " saved the government and the Constitution from destruction. " while the legal tender acts would, could any one be bold enough " to assert that Congress transgressed its powers? Or if these " enactments did work these results, can it be maintained now that " they were not for a legitimate end, or 'appropriate and adapted " to that end,' in the language of CHIEF JUSTICE MARSHALL? That " they did work such results is not to be doubted. Something " revived the drooping faith of the people; something brought " immediately to the Government's aid the resources of the nation, " and something enabled the successful prosecution of the war, " and the preservation of the national life. What was it, if not " the legal tender enactments?" (Pages 540-541, Law Pages 308-309)

CONGRESSIONAL FINANCIAL LEGISLATION FROM 1861 TO 1865: The financial legislation enacted by Congress, to meet and overcome the financial stringency and embarrassment which existed during the War of the Rebellion, is clearly and succinctly summarized, by this Court, in the opinion rendered by MR. CHIEF JUSTICE CHASE, in the case of *Veazie Bank v. Fenno*, 75 U. S. (8 Wall) 548, 19

Law 488, and as to certain phases of said legislation, it received a more full and extended consideration in the different opinions rendered by certain of the JUSTICES of this Court in the case of *Knox v. Lee-Legal Tender Cases*,- 79 U. S. (12 Wall) 405, 20 Law 308.

The principal Acts of Congress in chronological order relating to legal Tender or U. S. Notes. U. S. Treasury Notes, National Banks, the Taxation of the notes of State banks and of Municipal corporations intended to circulate as money or used in that way, Duties on Imports, the National Credit and Refunding of U. S. Bonds, were as follows:

1861: Act of July 17th-12St. at L., Ch. 5, P. 259. (R. S. U. S. Sec. 3589- *Treasury Notes*).

1862: Act of Feb. 12th-12 St. at L., Ch. 20, P. 338; (Duties on Imports and Treasury Notes). Act of Feb. 25th-12 S. at L., Ch. 33, P. 345 (*Legal Tender Notes*). Act of Mar. 17th-12 St. at L., Ch 45. P. 370, (*Legal Tender & Treasury Notes, Duties, on Imports*). Act of July 11th-12 St. at L., Ch. 142, P. 532 (*Legal Tender Notes & Duties on Imports*).

1863: Act of Feb. 25th-12 St. at L., Ch. 58, P. 665 (NATIONAL BANKS). Act of Mar. 3rd-12 St. at L., Ch. 73. P. 711.(*Treasury and Legal Tender Notes, Duties on Imports.*)

1864: Act of June 3rd-13 St. at L., Ch. 106, P. 99-100. (NATIONAL BANKS). Act of June 30th-13 St. at L., Ch. 172, P. 218, (*Treasury Notes and Duties on Imports*). Acts of June 30th 13 St. at L., Ch. 173. P. 251, 277.(*Tax on Banks*).

1865: Act of Mar. 3rd-13 St. at L., Ch. 78, P. 484. (*Tax on Bank circulation*).

1866: Act of July 13th-14 St, at L., Ch. 184, P. 146. (*Tax on Bank circulation*:)

1867: Act of Mar. 26th-15 St. at L., Ch. 8, P. 6. (*Tax on Notes paid out by National Banks*).

1868: Act of Feb. 10th-15 St. at L., Ch. 7. P. 34. (NATIONAL BANKS).

1869: Act of Mar. 18th-15 St. at L., Ch. 1, P. 1. (*Credit Strengthening Act*).

1870: Act of July 14th-16 St. at L., Ch. 256, P. 273(*Bond Refunding Act*).

These Acts, modified by amendments thereto, as they existed in 1878, are contained in Rev. St. U. S., (1878, in Title 39, *'Legal Tender'*, in Title 62, *'National Banks'*; in Rev. St. U. S. Sections

3412 and 3413, concerning Taxation of Notes used for circulation as money, when paid out by State or National Banks; in Section 3473, concerning Duties on Imports being payable in gold; in Section 3693, the Credit Strengthening Act; and in Sections 3695-3697, the Bond Refunding Act. In addition to the foregoing were the various Internal Revenue Acts, including Legacies and Succession duties, and the amendments thereto, Title 35, *'Internal Revenue'*.

The opinion in *Veazie Bank v. Fenno*, 75 U. S. (8 Wall) 537, 19 Law 488, by MR. CHIEF JUSTICE CHASE, stated that the State Banks suspended specie payments on December 31st, 1861, which necessitated a *new policy* on the part of the United States. The first part of the new policy was adopted by the Act of February 25th, 1862, (12 St. at L. Ch. 33 P. 345), wherein the issue of $150,000,000, of U. S. Notes was authorized, and the same were declared to be lawful money and a legal tender. This amount was subsequently increased to $450,000,000. (Pages 537-538, Law Page 484).

Another part of the new policy was the National Banking Acts which were adopted February 25th, 1863, June 3rd, 1864 and February 10th, 1868.

Under the Act of 1863, *the shares of stock of National Banks were not taxable by the State, and United States securities held by State Banks were not taxable, either directly against the State Banks, or indirectly, through the shares of stock in the hands of the shareholder.* .

Under the Act of 1864, the shares of stock of both National and State Banks were made taxable by the State, at their full value, including such part of their value as was deriveed from U. S. Securities owned by the respective Banks.

Under the Act of 1868, the shares of stock of National Banks continued taxable, by the State, as under the Act of 1864, *but the proviso in the Act of 1864, authorizing and requiring a similar taxation of the shares of stock of State Banks, was repealed* and no substitute was enacted in the place of said proviso.

THE PRIMARY AND CONTROLLING OBJECT OF THE FINANCIAL LEGISLATION OF CONGRESS, IN CONNECTION WITH THE WAR OF 1861-1865, AND THEREAFTER, AS AFFECTING THE ACT OF 1868.

The primary object of all of these Acts of Congress was to secure to the U. S. Government *more credit* and *more money*. What was imperatively needed was the *immediate use of larger sums of money*, part to be raised by taxation, some payable in

gold and some payable in United States Notes, commonly known as U. S. Notes or Legal Tender Notes or Greenbacks, some payable in U. S. Treasury Notes; to secure other sums of money by the sale of U. S. Bonds, or other U. S. Securities, some of which bonds were convertible into U. S. or Legal Tender Notes. Also to enable the Government to obtain credit, wherever it could do so, by a voluntary or compulsory acceptance of its bills of credit, that is Legal Tender or Treasury notes, to be paid out to its creditors to whom it was indebted for services rendered or supplies furnished, including payments to the soldiers, sailors, and marines in the service of the United States.

As part of the foregoing methods of obtaining money and credit, and, to that end, to induce the organization of National Banks, the Acts of Congress further provided that the Banks organized under the National Banking Act, might issue notes to circulate as money to the extent of 90 per cent of the market value of the United States Bonds, ($30,000 or more, but not less than one-third of the capital stock paid in), deposited with the proper officer, the Treasurer of the United States, and these National Bank notes were made receivable, at par, in all parts of the United States, in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports, and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the National currency. (Rev. St. U. S., Sec. 5182.)

There is not the slightest indication anywhere, in all of this legislation, prior to the National Banking Act of 1864, of the purpose or intent of Congress to lose or part with any opportunity to sell its bonds and securities at the best price obtainable therefor, which it previously had, without the aid of the foregoing legislation, and without interference, in any way, by the State, by taxation or otherwise. The main purpose of all of this legislation was to procure, for the government, *additional* credit and *additional* money, which the means existing, prior to said new legislation, were inadequate and insufficient to meet, because the demands for money were so great and the means usually relied on were already practically exhausted.

Prior to the adoption of the first of the National Banking Acts, in February 1863, the possible purchasers of U. S. Securities, including its Bonds, were subject to classification, as follows:

1: Foreign Bondholders;

2: All Federal Corporations, excluding National Banks, which were not in existence then, (organized under or by virtue of Acts of Congress,) which possessed the power to purchase such Securities.

3: Natural persons and co-portnerships domiciled within the United States.

4: Corporations and Joint Stock Companies organized under State laws, having power to purchase such U. S. Securities. Of these the State Banks were the principal purchasers of U. S. Securities.

5: Any of the foregoing, taking the legal title, while the equitable or beneficial ownership was in one or more other and distinct persons.

After the first National Banking Act was adopted, a new class was added, which *must* invest part of its capital in U. S. Bonds, and which *might* invest a greater part or all of its capital in such Bonds, thus adding class,

6: National Banks.

At the time the first National Banking Act was adopted, in February 1863, purchases of Bonds by Foreign Bondholders had practically ceased. In the quotation, *supra*, from MR. JUSTICE STRONG'S, opinion in *Knox v. Lee-Legal Tender Cases*, 79 U. S. (12 Wall.) 540, 20 Law 309, the statement is made: "Foreign credit we had none." (Page 540, Law Page 309.)

At the same date, the funds of State Banks and other State corporations, available for loans to the Government, by way of investments in U. S. Securities, were also practically exhausted. The same quotation, previously made from the opinion in the *Legal Tender Cases*, contained the statement: "Moneyed in- "stitutions in the United States, had advanced largely of their "means, *and more could not be expected of them.* They had been "compelled to suspend specie payments." This refers mainly to the State Banks which had suspended specie payments.

Nevertheless, the First National Banking Act of 1863 left intact, the constitutional immunity, from State taxation, directly or indirectly, of U. S. Securities, by whomsoever held, whether the title or interest was legal or beneficial, including National and State Banks.

The science of Banking which is a vitally important element in this case, is the making of money by the investment of the funds of others, the depositors, united with the funds of the Bank, keeping on hands money, or securities readily convertible into money, sufficient in amount to meet promptly, every time obligation of

the Bank, as fast as it matures; and, as to demand obligations, by keeping on hand, in money or convertible Securities, such percentage of the capital and deposits, as a long and large experience has demonstrated to be adequate, to promptly meet that class of the obligations of the bank when demanded. No Bank can succeed in operating a successful and remunerative business, without receiving deposits. The mere right to receive them is not sufficient; the deposits must be actually secured. The larger the proportion of the deposits to the capital, the more profitable the business to the Bank, and the investors therein.

In *Bank of Redemption v. Boston*, 125 U. S. 67, 31 Law 693, opinion by MR. JUSTICE MATTHEWS, this Court said: "But shares "of the National Banks, while they constitute the capital stock of "the corporations, do not represent the whole amount of the "capital actually employed by them. They have *deposits*, too, "shown in the present record to amount, in Massachusetts, to "$132,042,332. The Banks are not assessed for taxation on any "part of these, although *these deposits constitute a large part of "the actual capital profitably employed by the Banks in the con-"duct of their banking business.*"

It is true that the privilege of issuing Bank notes to circulate as money was a valuable one, but its value depended very much upon the restrictions placed upon the issuance of the circulating notes, and the security for their redemption required by law. In the National Banking Acts these restrictions were stringent.

Under the National Banking Acts, circulating notes could be issued only to the extent of 90 per cent of that part of the capital actually invested in U. S. Bonds after the Bonds were deposited with the U. S. Treasurer; as to 10 per cent of this investment in U. S. Bonds, the only income receivable thereon, was the rate of interest paid by the Government, which although a high rate for a Government to pay, was a low rate compared with that receivable on commercial loans and discounts, which are usually made for short terms of 60 or 90 days, so that the interest received was compounding itself from 4 to 6 times a year, while the interest paid by the Government was simple semi-annual or annual interest.

As to the other ninety per cent of the Bank's investment in U. S. Bonds, the Bank issued and loaned its own notes to that extent, less a reserve for redemption thereof, receiving commercial rate or interest thereon, in addition to the interest paid by the Government on its bonds, which was an important element of profit.

Nevertheless, notwithstanding this privilege, these National Banks could not pay the taxes imposed by the Government, with-

out any taxation by the State, together with the necessarily heavy expense of conducting a Bank, and, in addition, earn a fair or good rate of remuneration on the capital invested in the Bank, unless the Bank also received a considerable amount of deposits.

It is doubtless true that a National Bank, with its special privileges, could successfully conduct a paying banking business, with a smaller relative proportion or percentage of deposits to capital, than could be done by a State Bank, not having these special privileges; but a National Bank must have deposits to be successful.

It must further be remembered that idle capital in a Bank earns nothing, and to earn dividends the Bank must secure patrons or customers, able to give the requisite security, to whom its funds could be loaned; otherwise the Bank would not be successful.

The securing of depositors to make deposits in the Bank, and obtaining patrons or customers to whom the funds of the Bank could be safely loaned, depends mainly upon the good will of the local capitalists, investors and business men of the vicinity where the Bank is located. Congress, by its enactments could give the National Banks powers and privileges, but, by its enactments, Congress could not give the National Banks, a banking business. It was precisely in these elements that the National Banking Act of 1863 was weak and defective.

The causes of hostility to National Banks, when instituted under the Acts of 1863-1864, were partly political, party constitutional or legal, and partly commercial. The political and constitutional or legal objections were unavoidable, but were really of a temporary character, and this is especially true as to the constitutional or legal objections, which, in due course of procedure, and after a few years of time, would be and were settled by this Court. The political hostility began to disappear at or shortly after the close of the War.

The commercial objections, as we have termed them, were mainly due to an inherent defect in the original Act itself. That an institution, organized under Federal law, should come into a State, receive police and fire protection, and all other benefits derived from the expenditure of State and local taxation, without contributing any part of the public taxes necessarily levied to furnish this protection and these benefits, was not calculated to secure to these institutions the good will of the capitalist, investing, and commercial classes that is, the tax paying classes, of the various communities in the different States where the Banks located and attempted to engage in business. The natural and inevitable effect

of such legislation was promptly and severely or unfavorably felt by the new National Banks.

The result was, that in the following year, 1864, as a matter of common fairness and justice, and to secure a successful development of the new Banking system, the National Banking Act was amended so that these institutions indirectly, and the stockholders, as owners of the capital stock of the Bank, directly, should pay their proper proportionate share of the taxation necessary to furnish police and fire protection, and the other benefits derived from the expenditures of the public State and local taxes. This was equitable, prudent, and directly beneficial to the National Banks, in securing the good will of the investing and taxpaying classes of local citizens.

While this change in the Act was intended to and did remove the objections of the capitalist and commercial classes, based on the complete immunity from State taxation of such National Banking institutions and of the investors in the stock of such National Banks, it was still deemed necessary to protect these Associations from the ill-will or hostility to them, based upon other grounds, and, so as to effect this result, the two clauses, one concerning other moneyed capital and the other relating to taxation of State Bank shares of stock, were inserted in Section 41 of the Act of 1864, which accomplished the desired result in preventing discriminating or hostile State *taxing* legislation, adverse to National Banks.

It was soon discovered, however, that this Act of 1864 had, in another aspect of its commercial effect, withdrawn from investors in State Banks, all of the immunity from taxation of U. S. Bonds, so far as it affected the *net earning power* of their investment. While a *legal* differentiation or distinction had been drawn between the capital of the State Bank, and the shares of its stock in the hands of the shareholders, those who were investors in State Banks did not draw any such refined distinction. They looked only at the *net income* derived from their investment. It made no difference to the investors whether a deduction, by way of a State tax, from the gross income, derived from their investments in the State Bank, was made from the aggregate earnings of the Bank, while still in the hands of the Bank, before division and payment thereof to the investors, or whether the same proportionate deduction, by way of a tax, was made from the sum paid to them by the Bank, as earnings, after the investors had received such payments.

In either case, from the investors standpoint, the NET SUM received and available to the investors, was their share of the aggre-

gate earnings of the State Bank less each investors proportionate part of the deduction caused by State taxation. The investor ultimately paid the tax, and lost the tax so paid.

The only inducement which the United States could offer to a natural person, or to a corporation organized under State laws, to cause or induce him or it to invest capital in United States Securities, was the immunity of his investment from taxation under the authority of the State. This immunity was, in practical effect withdrawn from investors in State Bank shares of stock, by the Act of 1864, which had the inevitable consequence and effect of making U. S. Securities, with their low rate of interest, an undesirable and unprofitable investment to the stockholders of State Banks. Aside from and previous to the organization of National Banks, it was the State Banks that furnished by far the largest part of loans made to the Government, through the purchase of U. S. Securities, and it is the stockholders of the State Bank who control the Banks policy in matters of investment.

It is here important to note, that notwithstanding the apparent identity or similarity of the provisions in the Act of 1864, for the taxation of the shares of stock of National Banks and the shares of stock of State Banks, constitutionally and legally the basis of the State taxation rested ultimately upon entirely different grounds.

Permissive legislation enacted by Congress was necessary to authorize any taxation whatever upon National Bank shares, the National Banks being means or instrumentalities of carrying on the operations of the Government; the same proposition is true as to the taxation of the value of the shares of stock of either National or State Banks, in so far as such value was derived from investments of the Bank capital in United States Securities. To this extent the authority to tax is identical in each case, viz; permission given by Congress, auhorizing the State to tax these several subjects-matter, otherwise immune from State taxation.

But it was settled in *Van Allen v. Assessors*, 70 U. S. (3 Wall) 582-583, 18 Law 233-234, that the State tax, authorized by Congress to be imposed upon the shares of stock of National Banks, is a burden imposed by the National Government upon these Associations, as conditions to the grant, by Congress, to them, of chartered rights and privileges of great value to the corporations. It is essentially a franchise or privilege tax, computed on the basis of the value of the shares of stock in the hands of the individual shareholders. In this respect it is very similar to the tax imposed in *Society for Savings v. Coite*, 73 U. S. (6 Wall) 594, 18 Law 897 opinion by MR. JUSTICE CLIFFORD, decided in 1868, in which it was

held that the reference made, in the statute there considered, to the total amount of the deposits on the day named, is for the purpose of taxing the corporate franchises granted, and not as defining the subject matter of taxation.

But State corporations and their shares of stock stood on an entirely different footing. The National Government had not granted and could not grant any corporate franchises or privileges to any corporation organized under State Laws. Whatever tax was imposed upon State Bank shares of stock, under the authority of the proviso in Section 41 of the Act of 1864, was, to the extent that the value of such shares was derived from the investment of the Bank capital in U. S. Securities, a tax upon that part of the value of the shares derived from those U. S. Securities, imposed under the permissive authority of Congress, which Security had previously been immune from taxation.

The Act of 1864, therefore, discriminated strongly against State Banks, and doubtless, was intended so to do, as there were important and urgent reasons of National policy which induced Congress, at that time, to foster National Banks at the expense of State Banks. But the following discriminations against State Banks, which are stated below, were made all the same.

(A) The franchises and privileges of National Banks were granted by the National Government, and were wholly beyond the control of the State Government, and were, also, non-taxable by the State without permission of Congress. State Banks were necessarily under the control of the State, and, in some important respects, were also subject to National legislative control. Restrictions and limitations imposed upon State Banks for the security of depositors, such as a limitation of the ratio of deposits to capital, and to prevent defalcations by State Bank officials, could not affect National Banks or the officers of such banks.

(B) The special franchises and privileges granted by Congress to National Banks, were deemed a sufficient consideration for the State taxation which the State was authorized by Congress to impose on National Bank shares of stock. State Banks received from Congress, no franchises, privileges or other consideration whatever, for the State tax they were required to pay.

(C) National Banks were authorized to issue their own notes, to circulate as money, which was an advantageous privilege. On the other hand, the right to issue circulating notes, which many State Banks had previously possessed and exercised, under authority from the State, was taxed to death and destroyed by National Legislation.

(D) The immunity from taxation by the State of the legal title to U. S. Securities owned by State Banks, or of the beneficial interest therein, which, through the shares of stock, the investors in such State Bank stock had previously enjoyed under the U. S. Constitution, was withdrawn or destroyed by the Act of 1864. While National Banks were APPARENTLY on the same footing, they were not so in reality, because National Banks had received, by the Act of 1864, *full consideration* for all the taxes imposed on them by the State, while the State Banks received no consideration whatever from the Act of 1864, for this additional tax which the State was compelled to impose on State Bank shares, if the State elected to tax National Bank shares of stock.

(E) State Banks were now compelled to meet a new competition from National Banks for the ordinary banking business of their several communities, and in this competition, the National Banks had been specially favored and fostered by National legislation, while the State Bank had been handicapped and retarded by hostile, or at least, adverse, National legislation.

The full effect upon investors in State Bank shares of stock, where more or less of the bank capital was invested in U. S. Securities, of the proviso contained in Section 41 of the Act of 1864, concerning the taxation of State Bank shares of stock, was not generally discovered, or at least, was not fully and generally known and realized, until after the decisions rendered by this Court, in 1866 and 1867, in the cases of *Van Allen v. Assessors; People v. Commissioners,* and subsequently in other cases previously cited.

At the time these decisions were rendered the War had fortunately closed, most of the armies and navy had been disbanded and the remainder reduced from a war to a peace footing, and all of the immense extraordinary expenditures caused by the conduct of the war, had ceased. The problem now before Congress was an entirely different one, and raised altogether new questions. The purpose was to reduce everything to a normal peace footing as speedily as could be safely done.

From the time of the passage of the first National Banking Act in 1863, until the close of the War, the Government was compelled to rely almost entirely upon these new National Banks for sales of additional U. S. Bonds. As previously stated, there were few or practically no foreign investors, and State Banks, the largest previous investors in U. S. Securities, were already carrying all the Government Securities that they were able to carry or desired to carry. No special effort was therefore made by Congress, during the period from 1863 to near the end of 1867, to secure or encourage investments by State Banks, in such Federal Securities.

In 1867 and 1868, the new financial problem was to re-organize, rearrange and refund the indebtedness of the United States, at a lower rate of interest, on extended time, so that the Government debt would be in process of liquidation and reduction, and, at the same time, to permit some reduction of the burdensome taxation imposed by Congress for the purpose of successfully prosecuting the War. The practical legislative question was how best to effect these results.

These questions had been under consideration in 1867, and entered largely and actively into the political, newspaper and popular discussions and controversies, preceding the Conventions held in the different States during the early months of the year 1868, to select delegates to the National Conventions of the different political parties to nominate candidates for President and Vice-President; and were the subject of resolutions passed by many of these early State Conventions. They were the subject, in the general phraseology of such utterances, of the resolutions of the two great political parties in their National Conventions held in 1868, and were discussed at length during the Presidential Campaign of 1868, which resulted in the election of General Grant to the Presidency of the United States.

As soon as the new President and the new Congress took their seats, on March 4th, 1869, the first Act passed at an extra Session of the new Congress, and the first Act signed by the new President, was, what is commonly termed, the Credit Strengthening Act. legally designated as the Act of March 18th, 1869, 15 St. at L. I, Ch. 1.(See, Rev. St. U. S. (1878), Section 3693) This was followed, at the first regular session of the same Congress, by, what we understand to be, the first of the general Refunding Acts, passed for refunding U. S. Bonds and Securities issued during the War, legally known as the Act of July 14th, 1870, 16 St. at L. 273, Ch. 256. (See, Rev. St. U. S. (1878), Section 3695-3697.)

The main purposes of the Bond Refunding Acts were to issue Bonds, in very large amounts, bearing a lower rate of interest, so as to reduce the tremendous annual interest charge which the Government had to pay, and, by selling the new issues of Bonds, to obtain money and to use the proceeds to pay off and discharge or redeem the outstanding U. S. Securities, bearing higher rates of interest or containing more onerous conditions, and to arrange the dates of maturity of the new bonds so that the government could redeem or pay them off as they matured.

A necessary preparatory step to this refunding scheme was, for Congress to take whatever steps were *necessary to secure all possible purchasers of the immense issues of new bonds about to*

be made, and among these available purchasers, were the State Banks, whose good will or willingness to purchase the new bonds must be secured, which could only be effectively done by restoring the ancient and time-honored principle of the Constitution and of Congress, that the State should not, in any manner, by taxation or otherwise, interfere with the power of the United States, to effect loans and sell its securities at the best price possible. That is to restore the status of Constitutional and Statutory Federal law existing prior to the Act of 1864. While the National Banking Acts were in force the National Banks had purchased heavily of U. S. Securities, but the State Banks had relieved themselves to a considerable extent, changing their position in this respect compared with what it was in 1862, 1863 and 1864.

The problems therefore, which Congress had to meet, in a practical way, were these:

1. To require investors in National Banks to pay a fair and proportionate share of State taxation, such as was provided for in Section 41 of the Act of 1864:

2. To restore to investors in State Bank shares of stock the *complete immunity* of U. S. Securities from taxation, directly or indirectly, by the State, whether imposed upon the capital so invested or upon the Federal Securities themselves, or on the beneficial ownership of such Federal Securities by the investors through the shares of stock of the State Banks, which immunity the investors in State Bank shares of stock had enjoyed under the Act of 1863, and at all times prior to the Act of 1864.

3. To prevent hostile or discriminating taxing legislation, by the State, against the shares of stock of National Banks by compelling the State to impose a tax upon *all moneyed capital, within the power of the State to tax,* which came into competition with the BANKING BUSINESS of the National Banks, with the requirement that the tax imposed by the State upon its own banking institutions or the investors therein, might be greater or equal to, but could not be less, than the rate of taxation imposed upon the investors in shares of stock of National Banks. This was effected by the '*other moneyed capital*' clause.

These results were certainly attained by the Amendatory Act of 1868, if we are correct as to its policy, interpretation and construction. In this way the National Banking Acts were made a part of the permanent Federal legislation, on a peace footing, and the extraordinary departure from the previously established immunity of Federal Securities, directly or indirectly, from State taxation, which had been introduced by the proviso in Section 41

the Act of 1864, was treated as a War Measure, and repealed, on as possible after peace was restored.

In this way the ancient and long followed policy of Congress as reverted to, that all U. S. Securities should enjoy the Constitutional freedom from taxation, by the State, directly or indirectly, upon or against the legal or beneficial ownership thereof, and the proviso of Section 41 of the Act of 1864, authorizing and requiring a taxation by the State of the full value of the shares of stock of State Banks, was repealed, because it was no longer needed after the close of the War, and had become a hinderance to and interference with the new policy which Congress was about to put in force, by the sales of the U. S. Bonds, bearing a lower rate of interest, so as to relieve the people of the United States from the crushing burden of taxation necessary to pay the interest and reduce the principal of the huge National debt then existing.

Stating it in a different form, our contention is, that the Constitutional immunity of U. S. Securities, held by State Banks, from taxation, directly or indirectly, by the State, has continued in force during the entire existence of the United States Government, except during the period of about four years from 1864 to 1868, when the proviso of Section 41 of the Act of 1864, concerning the taxation of the shares of stock of State Banks, was in force.

For the reasons, already stated, whether the tax on the National Bank shares of stock be regarded as in the nature of a franchise or privilege tax, or as a tax, by permission of Congress, on the full value of the shares including the beneficial interest, through the shares of stock, of the U. S. Securities owned by the National Bank, the beneficial grant of franchises and privileges was regarded as sufficiently valuable to justify Congress in authorizing taxation by the State, of National Bank shares of stock, to the extent provided by the Act of Congress, accompanied as it was by a limitation or restriction upon the power of the State to discriminate in favor of State Banking capital and investments therein, so far as these subjects-matter of taxation were within the power of the State to tax, without permissive legislation enacted by Congress.

The importance to the United States of keeping its power to borrow money wholly free from any interference therewith by the State, by taxation or otherwise, has been stated so often in the decisions of this Court, previously cited in this brief, that further reference to that point is not necessary.

Nevertheless there is a clear-cut well defined statement of the proposition in a recent decision of this Court, which we therefore ask permission to quote. In *Hibernia Savings & Loan Soc. v. San*

Francisco, 200 U. S. 313, 50 Law 496, opinion by MR. JUSTICE BROWN, this Court said: "The efficiency of the government ser- "vice cannot be impaired by a taxation of the agencies which it "employs for such service, and as one of the most valuable and "best known of these agencies is the borrowing of money, *a tax "which diminishes in the slightest degree the value of the obliga- "tions issued by the government* for that purpose impairs *pro tanto* "their market value." All of the legislation of Congress relating to the taxation of National Banks must be considered, construed and interpreted in harmony with this important principle.

In the *Mercantile National Bank case*, referred to *supra*, the opinion said: "The main purpose, therefore, of Congress, in fix- "ing limits to State taxation on investments in the shares of Na- "tional Banks, was to render it impossible for the State, in levy- "ing such a tax, to create and foster an unequal and unfriendly "competition, by favoring institutions or individuals carrying on "a similar business, and operations and investments of a like "character. The language of the Act of Congress is to be read "in the light of this policy." (121 U. S. Page 155, Law Page 901).

This Congressional policy is fully and effectively carried out by requiring the State to tax all of that class of capital which is within its power to tax, without Congress permitting taxation by the State of U. S. Securities, directly or indirectly, or requiring the State to tax other moneyed capital, properly exempted by National or State laws from taxation by the State. The capital of a State Bank invested in U. S. Securities, is, so long as that investment continues, not used in active competition with the banking business of loans, discounts and exchanges of the National Banks. This construction of the Act of 1868, has the further merit of not permitting the State, by its taxing laws, to interefere with sales by the United States of its securities to such State Banks, while affording full protection to the banking business of National Banks.

A CONSTITUTIONAL EXERCISE, BY CONGRESS, OF ITS LEGISLATIVE POWER IS NOT SUBJECT TO REVIEW BY THE JUDICIAL DEPARTMENT: That this Court has no power to review the exercise, by Congress, of its Legislative powers and discretion, within Constitutional limits, is well settled by numerous decisions of this Court.

In *Knox v. Lee-Legal Tender Cases*, 79 U. S. (12 Wall) 539 540, 20 Law 308, the opinion written by MR. JUSTICE STRONG, says:

"The case, (*McCulloch v. Maryland*, 4 Wh. 405), also marks "out with admirable precision the province of this Court. It de-

"clares that 'when the law, (enacted by Congress), is not pro-
"'hibited and is really calculated to effect any of the objects in-
"'trusted to the government, to undertake here to inquire into
"'the degree of its necessity would be to pass the line which cir-
"'cumscribes the Judicial Department and to tread on Legislative
"'ground. This Court, (it is said), disclaims all pretensions to
"'such power.' It is hardly necessary to say that these principles
"are received with universal assent. Even in *Hepburn v. Gris-*
"*wold*, 75 U. S. (8 Wall) 603, 19 Law 513, both the majority and
"minority of the Court concurred in accepting the doctrines of
"*McCulloch v. Maryland*, as sound expositions of the Constitu-
"tion." (Page 539, Law Page 308.)

Also: "Before we can hold the Legal Tender Acts unconsti-
"tutional, we must be convinced they were not appropriate means,
"or means conducive to the execution of any or all of the powers
"of Congress, or of the Government, not appropriate in any de-
"gree (for we are not judges of the degree of appropriateness),
"or we must hold that they were prohibited." (Page 539, Law
page 308).

Also: "Is it our province to decide that the means selected
"were beyond the constitutional power of Congress, because we
"may think that other means to the same ends would have been
"more appropriate and equally efficient? That would be to as-
"sume legislative power, and to disregard the accepted rules for
"construing the Constitution. The degree of the necessity for any
"congressional enactment, or the relative degree of its approp-
"priateness, if it have any appropriateness, is for consideration in
"Congress, not here. Said CHIEF JUSTICE MARSHALL, in *Mc-*
"*Culloch v. Maryland*, as already stated, 'When the law is not
"'prohibited, and is really calculated to effect any of the objects
"'intrusted to the government, to undertake here to inquire into
"'the degree of its necessity, would be to pass the line which cir-
"'cumscribes the Judicial department, and to tread on Legislative
"'ground.'". (Page 542, Law Page 309).

In the same cases, (*Legal Tender Cases*), the concurring opinion, written by MR. JUSTICE BRADLEY, on the same subject, said:

"But it is said, why not borrow money in the ordinary way?
"The answer is, the Legislative Department, being the nation it-
"self, speaking by its representatives, has a choice of methods, and
"is the master of its own discretion." (Page 561, Law page 315).

In *Veazie Bank v. Fenno*, 75 U. S. (8 Wall) 548, 19 Law, 488, concerning the claim that a tax imposed by Congress upon the cir-

culation of State Bank notes was so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank and was, therefore, beyond the Constitutional power of Congress, the opinion written by MR. CHIEF JUSTICE CHASE said:

"The first answer to this is that the Judicial cannot prescribe "to the Legislative Department of the government limitations upon "the exercise of its acknowledged powers. The power to tax may "be exercised oppressively upon persons, but the responsibility of "the Legislature is not to the Courts, but to the people by whom "its members are elected. So if a particular tax bears heavily "upon a corporation, or a class of corporations, it cannot, for that "reason, only, be pronounced contrary to the Constitution." (Page 548, Law page 488).

In *Pacific Insurance Co. v. Soule,* 74 U. S. (7 Wall), 443 19 Law 98 the opinion by MR. JUSTICE SWAYNE said:

"Where the power of taxation, exercised by Congress, is war- "ranted by the Constitution, as to mode and subject, it is, neces- "sarily, unlimited in its nature. Congress may prescribe the basis, "fix the rates, and require payment as it may deem proper. Within "the limits of the Constitution it is supreme in its action. No "power of supervision or control is lodged in either of the other "departments of the government."

DIVISION V. (ORIGINAL BRIEF, PAGE 44).

IS THERE AN IMPLIED RIGHT ON THE PART OF AN IOWA STATE BANK, TO SUE FOR AND RECOVER FROM ONE OF ITS SHAREHOLDERS, A TAX PAID BY SAID BANK, ON THE SHARES OF STOCK OF SUCH STATE BANK IN THE HANDS OF SAID STOCKHOLDERS?

IN IOWA LAW, THE STOCKHOLDER HAS PAID THE TAX: Unless some private right exists in favor of a person, natural or artificial, and such right has been infringed, or unless some wrong has been done to a person, natural or artificial, such person can have no remedy, statutory or implied, to redress an alleged infringement of a right, or to redress an alleged wrong, because, in contemplation of law, there is nothing to remedy, since there is no right existing, or no right infringed, or no wrong done.

The decisions of the Supreme Court of Iowa, concerning the payment, by a State Bank, of taxes on the shares of stock in the hands of a shareholder, as we understand them, are, that no right of the State Bank has been infringed, no wrong done to said Bank, that the Bank has no right to recover from the share holder, and that the statutes of Iowa, which are exclusive as to the remedy, re-

fused to the Bank any right to sue; that such state statute law is not in contravention of the Federal or State Constitutions, in refusing any remedy by way of recoupment, to the Bank from the shareholder. Under decisions of this character, the State Courts will certainly not imply a right of the Bank to recover, by action, from the shareholder, the taxes paid by the Bank on the shares of stock belonging to the shareholder.

The theory of the Iowa decisions, is that when the Bank paid the tax, in reality or finality the shareholder paid and lost the tax, out of his dividends, or surplus, or capital, or out of the value of his shares, and the tax was thereby ultimately paid by, and lost to, the shareholder; and that a right of recovery, given to the Bank, would be a mere idle and useless ceremony, which does not affect any substantial or legal right of the Bank, or of the share holder.

There is no room for any doubt as to the theory upon which the decisions of the Supreme Court of Iowa are based. Concerning *Primghar State Bank vs. Rerick*, 96 Iowa 348, the Iowa Supreme Court, in *German-American S. Bk. vs. Burlington* (City), 118 Iowa 84, said:

"And it is said in answer to the *contention* that the Bank under "such circumstances, *would be paying taxes on property that it "did not own*, that 'as the capital of a State Bank is really owned "'by the stockholders, and as it is reduced by the amount paid "'for taxes, its value is reduced by a sum equal to that paid, and "'the shareholders do, in effect, pay the taxes.' This proposition "cannot be successfully controverted, for the reason that the Bank "is owned by its stockholders, and, if it is making money, and is "paying dividends or reserving a surplus, the payment of the tax "by the corporation, instead of by the individual stockholders, "affects the value of the stock exactly the same; and this is equally "true if the bank is not prosperous."

In brief, this decides that the shareholders ultimately pay and lose the tax advanced by the Bank out of the shareholders dividends, or their surplus, or their capital, or by means of the diminished value of their shares of stock, all of which are legally or beneficially owned by the shareholders. If this is true, there can be no right of recovery implied, because the payment of the tax has already, as matter of State law, fallen on the true tax debtor, the shareholder, and the bank will not be permitted to recover from the shareholder a debt, which in contemplation of law, the shareholder has already paid. Now, if this be or in so far as this is, a question of State law, the decision of the Supreme Court of Iowa on that point cannot be brought here for review. Its decision is final.

That this is the legal effect of the Iowa decisions, is further established by a reference to the statement made by the Iowa Supreme Court, with reference to the decision of this court, in *Van Allen v. Assessors,* (3 Wall) 573, as contained in *Primghar State Bank,* 96 Iowa, 243-244, as follows:

"In the case of *Hubbard v. Board,* 23 Iowa 143, a distinction "based upon *Van Allen v. Assessors,* (3 Wall) 573, between tax- "ing the capital stock and the shares of the capital stock, of a "bank, was recognized, but it cannot with any justice be said that "inequality of taxation results from taxing the shares *separately* "*to their owners* and taxing them *collectively to the Bank.* The "aggregate capital of an incorporated bank is virtually owned by "its stockholders, and each share represents a definite part of the "whole. (Citations). Therefore, the aggregate of the taxes "levied upon the separate shares would be the same as those levied "upon the separate shares taken together, or upon the capital "stock."

Upon any question of State law involved in this decision, the decision is conclusive; but as to any Federal questions it involves duly presented by the record in this case, plaintiff in error is entitled to ask for the judgment and decision of this court.

Doubtless, the opinion cited, intends to hold, as to Banks organized under Iowa law, that the legal question involved are purely matters of State law, are not in conflict with *Van Allen v. Assessors;* otherwise the conclusion would have to be arrived at that the Supreme Court of Iowa has seen fit to disregard the decisions of this court, on a matter of Federal law, which would not be just or courteous to that Court.

Van Allen vs. Assessors, held that Federal instrumentalities and Federal securities were *immune* from taxation, directly or indirectly, by the State, except to the extent and in the manner permitted by Congress; that Federal securities held by a State Bank and the beneficial interest therein owned by the shareholders through the shares of stock, were immune from taxation, directly or indirectly, by the State, except to the extent and in the manner provided by Congress; and in granting permission to the State to tax such interest in Federal securities, through the shares of stock of the State Bank, Congress had differentiated on the one side, between the ownership of the *capital* of the Bank, so far as invested in Federal securities, and, on the other side the *shares of stock* owned by the shareholder, to the extent that the value thereof was derived from the Federal securities in which the capital of the Bank, or some part thereof, had been invested; but this differentia-

tion, made by Congress must be conformed to and complied with by the State, in taxing the value of the shares of stock of the State Bank derived from U. S. Securities. It has been subsequently held by this Court, that a claim, that some other mode of taxation by the State is the *equivalent* of the mode prescribed by Congress, is unsound and untenable, but the State must comply with the Act of Congress authorizing the taxation of the shares of stock of the State Bank to the extent of the value imparted to them by the U. S. Securities owned by the Bank, otherwise the State would be without any power to tax such value.

Assuming, for the purpose of this argument only what we have elsewhere strenuously denied, and without waiving our contention to the contrary, that when the assessment in question was made, there was some Act of Congress authorizing the taxation of that part of the value of the shares of State Bank stock derived from U. S. Securities owned by the Bank, this taxation can only be imposed by the State because Congress has permitted it, by differentiating the ownership of the shares from the ownership of the capital. It is certain that the capital of the State Bank, so far as invested in Federal securities, or the Federal securities themselves, owned by the Bank, are not taxable, but under this differentiation, made by Federal law, the capital belongs to the Bank, the shares belong to the individual shareholders. Therefore, in Federal law, the shareholders do not pay a tax which the Bank has paid from its capital or assets, as the latter are not the property of the shareholders.

As to these Federal questions, involved in the case, the Iowa decisions, above referred to, are erroneous, but until reversed, the holding of the Supreme Court of Iowa, is, that the shareholder has ultimately paid the tax, which the Bank merely advanced, from the shareholders property, funds, assets, or values, and the Bank cannot recover, from the shareholder, a tax, which the shareholder has already paid, and no right to recover the same from the shareholders will be implied by State law, in favor of the Bank paying the tax.

THE IOWA STATUTORY REMEDY IS INTENDED TO BE COMPLETE AND EXCLUSIVE:

It is the general rule, at common law, concerning Statutory remedies, that:

"A statute instituting a new remedy for an existing right does not take away a pre-existing remedy without express words or necessary implication; the new remedy is cumulative and either may be pursued. But when a statute gives a right or remedy which

did not exist at common law, and provides a specific method of enforcing it, the mode of procedure provided by the Statute is exclusive, and must be pursued strictly. *26 Am. & Eng. Enc. of Law* 671, Title *'Statutes'*".

In Iowa, for many years it was deemed settled law, under the decisions in *Burlington (City) v. Railway Co., 41 Iowa, 139, and Dubuque (City) v. Railroad Company,* 39 Iowa, 157, that where a special remedy was provided for the collection of a general tax and the tax was also, by the same statute, declared to be a *debt,* the right to sue for the tax, *as a debt,* was cumulative to the special statutory remedy. But in *Crawford County v. Laub,* 110 Iowa 357, the foregoing question was declared to be still an open one, in Iowa, because but *two* of the *four* judges concurred in those prior opinions. Nor was the point settled in the *'Crawford County'* case, although the opinion says "the decided weight of authority " is that the particular remedy provided by statute is exclusive". (Page 357). The case did decide, that a lien given by statute, for a mulct law liquor tax, was not collectible in equity, although said tax is a debt personally of the proprietor and his sureties.

In *Plymouth County v. Moore,* 114 Iowa 701, the County sued for the amount of a tax levied upon a stock of goods, which, by statute, was made a lien on said stock of goods, and a method of enforcing said lien was provided by statute. The holding was, that the County could not maintain the action, because in adopting the remedy, provided in the statute, "the legislature must be held " to have intended to exclude any other proceedings". (Pages 702-703).

In *Shearer v. Citizen's Bank,* 105 N. W. (Iowa) 1025, plaintiff as Treasurer of Washington County, Iowa, brought suit to recover from defendant certain omitted taxes. A demurrer to the petition was sustained, and a judgment was affirmed. The proceeding, by action, to recover omitted taxes, is statutory; and the Supreme Court of Iowa said, that: "but for the statutes to which we have " referred, no action at law would lie for the recovery of taxes on " omitted property or otherwise", (page 1026—left column), and the holding was, that the action was barred, not having been brought within the five (5) years allowed by the statute therefor.

Code of Iowa, (1897), Sections 1322, 1323 and 1325, purport to cover the whole subject of the taxation of the shares of stock of National Banks, State and Savings Banks, and Loan and Trust Corporations, and all other Corporations organized under the laws of Iowa; also providing by what corporations such taxes shall be paid, and in what cases recoupment from the shareholder shall be

allowed in favor of the corporation. These provisions have been held by the Supreme Court of Iowa, to be in accordance with the State Constitution, and not in violation of the U. S. Constitution, concerning direct or indirect taxation by the State of U. S. Securities, nor in violation of Article XIV of the Amendment to the U. S. Constitution, concerning due process of law and the equal protection of the laws.

This statute was, doubtless drawn in harmony with, and under the authority of, the case of *Primghar State Bank v. Rerick*, 96 Iowa 238, cited *supra*, which was decided on October 25th, 1895, and the Code of Iowa, of 1897, was adopted during the extra session of the 26th General Assembly of Iowa, held during the year 1897 which went into effect on October 1, 1897.

It was intended by these statutes, that the right of recoupment, given by these sections, should be exclusive, and exist only when and as given, and should not exist where it was not given, by statute The underlying reason for the action of the Legislature, as to the Banks, was its acceptance of the rule laid down in the *'Primghar Bank'* case, viz: that the stockholders had actually paid and lost the tax, which the Bank had merely advanced for the benefit of the stockholders, and there being no debt, there ought not to be any right of recoupment, although a different rule was established by Statutes as to other State corporations.

STATE BANK CORPORATIONS ARE PRIMARILY LIABLE FOR PAYMENT OF TAXES ASSESSED ON THE SHARES OF STOCK: We have already stated, in our original brief, that the purpose and intent of the foregoing statutes was to make the Bank primarily liable for the payment of the tax assessed upon the shares of stock of the shareholders; that in its ultimate purpose and effect, the Legislature intended to tax the Bank, and to use the value of the shares of stock belonging to the shareholders, merely as a measure of the amount of tax, which the bank should be required to pay. But when the Bank paid the tax, so assessed, for the payment of which the Bank was made primarily liable, the Bank was simply paying its own debt, and necessarily it had no right to recover from any body else, when it simply paid its own just debt.

Nor is there anything in the *'Primghar State Bank'* case, or in the *'German-American State Bank'* case, cited *supra*, not in harmony with this contention. The principle of those cases is, that, although the State Bank has paid the tax on the shares, it was *not paying the debt of another*. This is very clearly stated. But it was either paying the debt of another, or paying its own debt,—one of the two; and if it was not paying the debt of another, it must

have been paying its own debt, and was primarily and legally liable therefor. The opinion then goes one stage further, and holds, that because of the fact that the equitable or beneficial ownership of the bank capital, surplus, earnings and property, is in the shareholders, the ultimate loss of the tax, has fallen upon the shareholders.

This does not, in any manner, conflict with the prior proposition, that when the Bank paid the tax, it paid its own debt, and did not pay the debt of another, and therefore it had no legal right, statutory or implied, to recover from another, when it had only paid its own debt.

Respectfully submitted.

HORATIO F. DALE, and
WM. G. HARVISON,
Attorneys for Plaintiff in Error.

FILE COPY.

Supreme Court of the United States

Supreme Court, U.S.
FILED
MAR 4 190
JAMES H. McKEN

Nos. 92.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY,

AS A BOARD OF REVIEW.

No. 93.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR.

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY,

AS A BOARD OF REVIEW.

In Error to the Supreme Court of the State of Iowa.

Additional Brief and Argument for Plaintiffs in Error.

NATHANIEL C. GUERNSEY,
Attorney for Plaintiff in Error People's Savings Bank.
GEO. F. HENRY,
Attorney for Plaintiff in Error Des Moines Savings Bank.

Supreme Court of the United States

No. 83.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY.

AS A BOARD OF REVIEW.

No. 92.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR.

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY.

AS A BOARD OF REVIEW.

In Error to the Supreme Court of the State of Iowa.

Additional Brief and Argument for Plaintiffs in Error.

NATHANIEL T. GUERNSEY,
Attorney for Plaintiff in Error People's Savings Bank.
GEO. F. HENRY,
Attorney for Plaintiff in Error Des Moines Savings Bank.

Supreme Court of the United States

No. 83.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY.

AS A BOARD OF REVIEW.

Additional Brief and Argument for Plaintiffs in Error.

Accepting the distinction repeatedly recognized by this court between the capital of the corporation and the share stock, so called, of the shareholders, the fundamental propositions asserted in the main brief of the plaintiffs in error are:

First: That the statutes of Iowa and particularly section 1322 of the code of 1897 of Iowa (printed in full on page 20 of the combined brief and argument for the plaintiffs in error in the above entitled cases), when properly construed, in fact direct the levy of a tax upon the capital of savings banks and not upon the share stock of the shareholders.

If this is so, then unquestionably in the determination

of the value of such capital for taxation, the banks were entitled to a deduction in an amount equivalent to the amount of such capital invested in United States bonds. This right was denied by the decree of the court below.

Second: If said section 1322 requires that the shares of stock owned by their shareholders be assessed and taxed to the savings banks, then, because the banks in such event would be taxed upon property which they do not own, this section would deprive them of their property without due process of law and is therefore void because in contravention of the fourteenth amendment to the constitution of the United States.

These propositions the appellants reassert. We desire in this additional brief to emphasize what has already been said as to the rule of construction applicable to the statute under consideration, and in connection with an examination of the facts in the cases already decided, to demonstrate that the case at bar is radically distinguished from the cases which have preceded it, in that here the tax is levied not against the shareholder, but directly against the bank, and is to be paid not by the stockholder or out of his funds, but by the bank out of its own funds, without reimbursement, so that the tax here, instead of being a tax against the shareholder, and in fact paid by him, is a tax against the bank, and in fact paid by it. We desire also to allude to one or two collateral matters suggested by the oral argument.

The opinion in this case has not been printed in the official Iowa reports. It is set out at page 28 of the transcript and is reported at page 867, volume 101, of the Northwestern Reporter.

POINTS.

I.

Rule of construction and its application.

The court will look to the result effected by the law, and not to its form; and if the result of the law is to impose a tax upon bonds of the United States the law is void, whatever its form may be.

Home Insurance Co. vs. New York State, 134 U. S. 594, 598;
New Orleans vs. Houston, 119 U. S. 278.

Section 1322 of the code of Iowa, properly construed, imposes a tax upon the property of the corporation and not upon the shares of the shareholder.

People ex rel. vs. Coleman, 126 N. Y. 433;
Monroe County Sav. Bk. vs. Rochester, 37 N. Y. 365.

And the manner in which the tax was levied shows that it was a tax upon the property of the corporation and it would under the decisions of the supreme court of Iowa be void as a tax against the shares.

National Bank vs. Hoffman, 93 Iowa 119.

II.

The facts in the cases already decided.

Whatever the form of the transaction, if, as a matter of fact, an assessment is made by which the value of the bank's property is determined, and upon this assessment a tax is levied which must be paid by the bank without reimbursement, the tax is a tax on the property of the bank.

Delaware & L. R. R. Co. vs. Pennsylvania, 198 U. S. 341

A review of numerous cases decided by this court and a few of the cases decided by the state courts demonstrates that in every instance where the bank is made a collecting agent the statute that has required it to pay the tax for the corporation has also contained a provision for the reimbursement of the bank and has in every instance required the shares to be assessed to the shareholders and not to the bank. The cases whose facts are reviewed are the following:

Van Allen vs. The Assessors, 3 Wall. 573;
Bradley vs. The People, 4 Wall. 459;
National Bank vs. Commonwealth, 9 Wall. 353;
Lionberger vs. Rouse, 9 Wall. 468;
Bank of Redemption vs. Boston, 125 U S. 60;
Palmer vs. McMahon, 133 U. S. 660;
Bell's Gap R'd Co. vs. Pennsylvania, 134 U. S. 232;
Aberdeen Bank vs. Chehalis County, 166 U. S. 440;
Merchants Bank vs. Pennsylvania, 167 U. S. 461;
Owensboro Nat'l Bk. vs Owensboro, 173 U. S. 664;
Cleveland Trust Co. vs. Lander, 184 U. S. 111;
Corry vs. Baltimore, 196 U. S. 466;
Frazer vs. Seibern, 16 Ohio St. 615;
St. Louis Bldg. & Sav. Assn. vs Lightner, 42 Mo. 421;
Adair vs. Robinson (Tex. Civ. App.), 25 S. W. 734;
City of Utica vs. Churchill et al, 33 N. Y. 161;
Bank of Chemung vs. City of Elmira, 53 N. Y. 49;
Batterson vs. Town of Hartford, 50 Conn. 558.

It is significant that the obligation of the bank under the Iowa statutes is not under some special statute requiring it to pay a tax levied against its shareholders, but is under the

general law requiring each property owner to pay the taxes levied against his property. Where under the Iowa statute certain corporations, not including these banks, are made collecting agents, this liability is imposed by a special enactment which provides for reimbursement.

Section 1325, code of Iowa, 1897.

The absence of the usual provisions where a corporation is a collecting agent makes it clear that the legislature did not so regard the banks under Sec. 1322.

III.

The case at bar is not ruled by the cases which have been referred to.

It can only be brought within the doctrine of these cases by holding that savings banks under section 1322 of the Iowa code are mere collecting agencies.

This conclusion is negatived by the language of the act, the fact that the obligation of the bank to pay is only the obligation of each property owner to pay taxes on his own property, the fact that the special statute does not impose any liability on the bank as a collecting agent, the fact that no provision has been made for its reimbursement, and the further fact that it is not entitled to reimbursement in the absence of a special statute.

IV.

Section 1322 discriminates against savings banks.

The owners of stock in national banks may offset against the assessment upon such stock indebtedness owing by them.

Code of Iowa of 1897, sec. 1311.
First Nat'l Bk. vs. City Council, 86 Iowa 28.

The same rule has been announced by this court under a like statute.

People vs. Weaver, 100 U. S. 539.

The right to offset is only in the person against whom the tax is levied and consequently nothing can be offset against the assessment levied against savings banks under section 1322.

Nat'l Bk. of Virginia vs. City of Richmond, 42 Fed. 877.

The statute does not authorize the banks to offset indebtedness of their stockholders, and it would not be permitted because the stockholders have the right to offset this same indebtedness against the assessments of their individual moneys and credits.

I.

Rule of Construction and its Application.

Home Insurance Company vs. New York State, 134 U. S. 594, 598.

In this case this court, referring to the inhibition upon the power of the states to tax bonds or obligations of the United States, says:

Nor can this inhibition upon the states be evaded by any change in the mode or form of the taxation, provided the same result is effected—that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be ac-

complished indirectly. Through all such attempts the court will look to the end sought to be reached, and if that would trench upon a power of the government, the law creating it will be set aside or its enforcement restrained.

In

New Orleans vs. Houston, 119 U. S. 278,

referred to and quoted from on pages 32-3 of our original brief, this court refers to the rule of construction in the following language:

Indeed, it is quite apparent from the language of the whole section, that, while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of the individual shareholders, but are to be paid by the corporation *so that while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name.* (The italics are ours.)

People ex rel. vs. Coleman, 126 N. Y. 433.

In this case the Court of Appeals of New York, after referring to the confusion and trouble that has arisen because these two different things, viz: the company's capital and the shareholders' stock are denominated alike, "capital stock," reaches the conclusion that the phrase "capital stock" in the particular statute means not the share stock of the stockholders, but the capital owned by the corporation, the fund required to be paid in and kept intact as the basis of the business enterprise and the chief factor in its safety. It points out the following matters as inducing that conclusion:

First, that the tax is assessed against the corporation and upon its property, and not against the shareholders and so upon their property. Referring to the fact that every tax

is charged against some person, natural or artificial, resident or non-resident, known or unknown; that it is assessed not upon property irrespective of ownership, but against persons in respect to their property, and effects not merely a lien, but also a personal liability, the court says:

On the assessment rolls in this case appeared the name of the relator as the person assessed, and the amount of the tax became a charge against it. Of course, it could only be assessed and taxed in respect to its own property, that which in its corporate character it owned and possessed, and so it follows inevitably that the statute concerns the company's capital stock, that is, its real and actual capital, and not in any respect the share stock which it does not own and whose possessors have not been assessed.

Secondly, the court finds another reason for its conclusion in those terms of the statute which include and exclude respectively certain kinds or classes of property in the corporate ownership. Upon this point it says:

Thus the assessment is to be laid not merely upon the capital stock of the corporation, but also upon its surplus. No such explicit direction was necessary, except upon the assumption that by the words "capital stock" was meant simply "capital," which would not include surplus, and so required that it be subjected by name to the valuation. If the share stock was meant its value would include surplus and makes its specification not only needless, but confusing. But while the statute includes surplus by specific mention, it excludes franchise by omitting it. The omission of franchise is emphasized by the careful inclusion of surplus. It is fully and definitely settled that the tax imposed by the statute is not upon the franchise. But if that be so, it is not upon the share stock, for that represents the value of the corporate franchise, as a part of the total of the corporate property. And so, both by what it specifically includes and silently excludes, the statute itself informs us that by "capital stock" it means and intends the company's actual capital paid in and possessed, and not at all in any sense the share stock.

The same court in

Monroe Co. Savings Bank vs. Rochester, 37 N. Y. 365,

after referring to the settled doctrine of the Supreme Court of the United States, that government securities are exempt from assessment by the state legislatures, says:

It is a necessary result, that such exemption cannot be evaded by any mere change of form or name in the law by which the tax is imposed. If, in fact, the tax is laid upon such bonds and securities, then, by whatever form of word the imposition is laid it is illegal.

Applying these rules of construction to section 1322 of the code of Iowa, we think it is clear that while such section speaks of "shares of stock" of savings banks, yet the statute as a whole indicates that reference is in fact to the capital stock of the banks and not the separate property of the individual stockholders, which we have heretofore called the share stock of the stockholders. The court will note upon referring to such section (p. 20 of original brief of plaintiffs in error in these cases) that it is expressly provided that these shares of stock of savings banks *"shall be assessed to such banks * * * and not to the individual stockholders."* Now, paraphrasing the language of the court of appeals in the Coleman case above referred to, and having in mind that every tax must be assessed not upon property irrespective of ownership, but against persons in respect to their property, this tax is assessed against the banks and upon its property and not against the shareholders and so is not upon their property.

Such statute provides that in fixing the value of such shares the corporations shall furnish the assessor a verified statement which shall show separately the amount of capital stock and the surplus and undivided earnings, and the

assessor from such statement, so furnished by the banks, and other information he can obtain, shall find the value of such "stock" the tax including not only the capital, but also the surplus, and undivided earnings. Again paraphrasing the language of the court of appeals in the Coleman case, the assessment is to be laid not merely upon the capital stock of the corporation, but upon its surplus. No such direction was necessary except upon the assumption that by the words "shares of stock" was meant simply capital, which would not include surplus and so required that it be subjected by name to the valuation. If the share stock was meant its value would include surplus, making its specification not only needless, but confusing.

The statute in question also excludes franchise by omitting it. The omission of franchise is emphasized by the careful inclusion of surplus. Yet in levying upon the value of the share stock of the shareholders it would be necessary to include the value of the corporate franchise. Its exclusion by omission shows that the tax is not upon the value of the share stock for in arriving at such value the corporate franchise as a part of the total of the corporate property should be included. Again, exactly quoting the language of the court of appeals in the case referred to, we say: "And so both by what it specifically includes and silently excludes, the statute itself informs us that by 'shares of stock' is meant and intended the company's actual capital paid in and possessed, and not at all or in any sense the 'share stock.'"

Further, the statute specifically says in its closing words, after providing for the deduction of real estate, "and the *property of such corporations* shall not be *otherwise* assessed." The court will note that the provision is not "and the property of such corporations shall not be assessed." This would have been the natural form of expression if the

provision of the statute were for the taxing of the property of the stockholders, that is, their share stock as distinguished from the capital stock of the corporation. The statement "and the property of such corporations shall not be otherwise assessed," plainly indicates that because the statute does make a certain provision for the assessment of the property of such corporations, it shall not be *otherwise* assessed.

Not only does section 1322 of the code of Iowa, in the light of the foregoing principles, provide for an assessment of the capital of the bank, in our judgment, but the act of the assessor and all the taxing officers shows an intention to tax the property of the corporation and not the shareholders for their stock. As the tax was assessed and placed on the book, it appeared, first, to be a tax against each bank upon "moneys and credits" of which it was the owner, and not against the stockholders. In the first notice of assessment, the notice was to the bank with respect to its property as "moneys and credits." The second notice was also to the bank; it was still an assessment of its property, but as "moneys and credits" in the case of the Des Moines Savings Bank and as "corporation stock" in the cases of the Home Savings Bank and People's Savings Bank. In none of the cases did it purport to be an assessment against the stockholders. No mention was made of the stockholders, either generally or by name, anywhere in the notices or in the tax books, and there is nothing of record in the way of assessment, levy, or tax books showing that there was any intention to levy a tax against any person other than the bank as a corporation. The Supreme Court of Iowa has held such a tax with respect to a national bank, where the act of congress required the tax to be against the shareholders on their shares, was a void assessment and levy.

National Bank vs. Hoffman, 93 Iowa 119.

In this case the tax books showed an assessment *in solido* against the bank of $5,000 as the value of its personal property. The court say (p. 121):

It is conceded that the assessor did not intend to assess any property of the bank, but his purpose was to assess the capital stock to the amount of 40 per cent of its par value. As the tax was assessed and placed on the books, it appeared to be a tax against the bank upon "personal property," of which it was the owner, and not against the stockholders. No mention was made of the stockholders, either generally or by name, and there is nothing of record in the way of assessment, levy or tax books showing that there was any intention or purpose to levy a tax against any person other than the bank as a corporation. This was upon the face of the transaction a void assessment and levy.

This case would seem to establish the proposition that the assessment now in question cannot be sustained as an assessment of the shareholders for their shares of stock.

In this connection we refer again to the cases set out in our former brief on pages 42-47, inclusive.

II.

The facts in the cases already decided.

Since it is conceded that the bonds of the United States may not be taxed, the ultimate question in every case of this character must necessarily be, is the tax in fact a tax upon the property of the bank? And we submit that whatever the form of the transaction, and whatever the effort be to disguise its real character, if the amount of the tax is ascertained by the levy of a fixed percentage upon an amount, determined by an assessment to be equal to the value of the bank's property, and if this tax is actually exacted from the bank, without provision for its reimburse-

ment, then it is a tax upon the property of the bank.

Delaware L. &c. R. R. Co. vs. Pennsylvania, 198 U. S. 341,

is exactly in point on this question. At page 353 the court says:

Now, was this tax, in substance and effect, laid upon the coal which was beyond the jurisdiction of Pennsylvania? The Supreme Court of Pennsylvania has held that a tax on the value of the capital stock is a tax on the property and assets of the corporation issuing such stock. *Commonwealth vs. Standard Oil Co.,* 101 Pa. St. 119, 145; *Fox's Appeal,* 112 Pa. St. 337; *Commonwealth vs. Delaware &c. R. R. Co.,* 165 Pa. St. 44. This court has also frequently held that a tax on the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and in consequence no tax can thus be levied which includes property that is otherwise exempt. *Bank of Commerce vs. New York City,* 2 Black. 620; *Bank Tax Case,* 2 Wall. 200; *Pullman's Car Co. vs. Pennsylvania,* 141 U. S. 18, 25; *Fargo vs. Hart,* 193 U. S. 490, 498, 499.

Turning now to the bank cases heretofore decided, their facts show that heretofore no statute has attempted to assess the shares to the bank; that the assessment has invariably been against the shareholders; and that in every case where the bank has been required by statute to pay the tax in the first instance, statutory provision has been made for its reimbursement, so that it has become a mere collection agent, and has not in fact been required to pay the tax.

Van Allen vs. The Assessors, 3 Wall. 573,

is the leading case. The law of New York there in question provided (page 577) that all the *shares* in any of the banking associations in that state organized under the act of congress, held by any *person or body corporate* shall be included in the valuation of the personal property of such

person or body corporate, etc. The assessors at Albany (page 578) "assessed *one Van Allen* for fifty shares owned by him of the capital stock of the First National Bank of that city and *assessed all the other shareholders* in like manner for theirs."

Because this was an assessment of shares to the shareholder the court held that it was not a tax upon the capital of the bank; holding the statute invalid, however, because it discriminated in favor of state banks.

People vs. Commissioners, 4 Wall. 244,

involved the following New York statute:

Section 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this state or of the United States; but the *stockholders* in such banks and banking associations *shall be assessed* and taxed on the value of their *shares* of stock therein; said *shares* shall be included in the valuation of the personal property *of such stockholder* in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town, or ward, or not.

Note that this expressly prohibits a tax upon the capital of the bank and taxes the shares to the stockholders. On this question the case follows *Van Allen vs. The Assessors.*

In

Bradley vs. The People, 4 Wall. 459,

the shares were taxed to the shareholders. In a very brief opinion the court states that the statute is substantially like that involved in

Van Allen vs. The Assessors,

and follows the latter case.

National Bank vs. Commonwealth, 9 Wall. 353,

is the first case affirming the proposition that the tax may be collected through the bank.

The court states on page 360 that the Kentucky law in question

was intended to tax the *shares* of the stockholders, and that if no other provision had been made the amount of the tax would have been *primarily collectible of the individual or corporation owning such shares* in the same manner as other taxes are collected from individuals.

The requirement that the bank in the first instance pay the tax is sustained solely on the ground that the bank is merely a collecting agency. No question under the fourteenth amendment was made in this case, and in fact the case was decided in this court in December, 1869, and so must have arisen prior to the ratification of the fourteenth amendment which was proclaimed July 28, 1868.

Lionberger vs. Rouse, 9 Wall. 468,

arose under a statute of Missouri, under which the shares were assessed to the individual, containing an express provision for the reimbursement of the bank, the law as to this question being as follows:

> The tax assessed on shares of stock, embraced in said list, *shall be paid by the corporations respectively, and they may recover from the owners of such shares the amount so paid by them,* or *deduct the same from dividends accruing on such shares.*

Bank of Redemption vs. Boston, 125 U. S. 60,

arose under a statute of Massachusetts which was held to be valid. This statute expressly required the shares to be assessed to the owners thereof, saying on this subject (page 61):

Sec. 8. All shares of stock in banks, whether of issue or not, existing by authority of the United States or of the commonwealth and located within the commonwealth, *shall be assessed to the owners thereof.*

It required the corporation to pay the tax in the first instance, but it expressly provided for its reimbursement, and for a lien on the stock. In this connection the provision of the statute is:

The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation, and on all the rights and property of the shareholders in the corporate property for the payment of said taxes.

The main question in this case was one of discrimination. The question of the rights of the bank as against the shareholders is not discussed in the opinion.

Palmer vs. McMahon, 133 U. S. 660,

arose in New York. The New York statute (page 666) expressly provides that the shares are to be taxed to the shareholders. The following is taken from the portion of the statute set out at page 6[illegible]

The *stockholders* in every bank, banking association or trust company, organized under the authority of this state, or of the United States, *shall be assessed and taxed* on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders.

The bank was not required to pay the tax, so that no question of its reimbursement arose.

Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S. 232,

arose in Pennsylvania. There, bonds or other securities of corporations are taxed at three mills on the dollar of their par value. The procedure was as follows:

If the treasurer of a corporation fails to make return of its loans, as required by law, the auditor general makes out and files an account against the company, charging it with the tax supposed to be due. This account, if approved by the state treasurer, is served upon the corporation, which must pay the tax within a specified time, or show good cause to the contrary. If it objects to the tax, it is authorized, in common with all others who are dissatisfied with the auditor's stated accounts, to appeal to the court of common pleas of the county where the seat of government is (at present Dauphin county), which appeal is served on the auditor general, and by him transmitted to the clerk of said court, to be entered of record, subject to like proceedings as in common suits. A declaration is then filed on the stated account in behalf of the state, and the cause is regularly tried.

The railroad having failed to make a return, an account was made out against it, an appeal taken, and a declaration filed and the cause tried. On page 239 the court says:

That the corporation is taxed for property it does not own. This objection is not true in point of fact. The corporation, as the debtor of its bondholders, holding money in its hands for their use, namely, the interest to be paid, is merely required to pay to the commonwealth out of this fund the proper tax due on the security. *The tax is on the bondholder, not on the corporation.* This plan is adopted as a matter of convenience, and as a secure method of collecting the tax. That is all. It injures no party. It certainly does not infringe the Constitution of the United States by making one party pay the debts and support the just burdens of another party, as is implied in the objection.

Note that the opinion in sustaining the tax finds that it is a tax on the bondholder and that it is paid out of the money of the bondholder, recognizing the fact that if it

were paid out of the money of the bank the tax would be void.

In

Aberdeen Bank vs. Chehalis County, 166 U. S. 440,

the statute provided for the reimbursement of the bank. We make the following excerpt from the opinion:

If this section stood alone there might be ground for the contention that it contemplates taxation of the capital of the bank. But section 23 of the statute provides that "each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their individual profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership.

In

Merchants Bank vs. Pennsylvania, 167 U. S. 461,

the statute first provided that all banking institutions, state or national, might elect to collect from the shareholders eight mills on the dollar upon the par value of all shares and pay the same into the state treasury; and provided further, that if the banks did not avail themselves of this election, they should furnish a verified statement setting forth the number of shares and their actual value and that thereupon these shares should be assessed. There is nothing that requires the payment of the tax by the bank or contemplates the assessment of the shares to the bank.

Owensboro National Bank vs. Owensboro, 173 U. S. 664,

did not involve the taxation of shares, but involved the collection of certain so-called franchise taxes. This case

we have quoted from at length in our brief in answer to the claims made for the doctrine of equivalency.

In

Cleveland Trust Co. vs. Lander, 184 U. S. 111,

the tax was against the shareholders upon their shares. This is more fully set out in the opinion of the Supreme Court of Ohio than in the opinion here.

In

Corry vs. Baltimore, 196 U. S. 466,

the tax was upon the owners of the shares and the corporation was the mere collecting agent. The opinion says:

The statutes undoubtedly impose upon a Maryland corporation the duty of paying for and on account of the owners the taxes assessed in respect of the shares, and compel such payment without reference to the dividends, *giving to the corporation a lien upon the shares of stock, and entitling the corporation, when it pays the taxes, to proceed by a personal action to recover the amount paid.*

As to the character of the tax, it quotes the following from a decision by the Supreme Court of Maryland:

But the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the state for the collection of the state tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and under existing laws are taxable property. They belong to the stockholders respectively and individually, and when for the sake of convenience in collecting the tax thereon, the corporation pays the state tax upon these shares into the state treasury, it pays the tax not upon the company's own property, nor for the company, but upon the property of each stockholder and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence

when the owner of the shares is taxed on account of his ownership and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all.

This review of the cases decided by this court discloses no case where the right to tax the shares of the shareholder to the corporation has to any extent been recognized. The limit to which the cases go is to establish the right to make the corporation a collecting agent. And in every such case the right to reimbursement is recognized. The term collecting agent, and the right to reimbursement are consistent only with the theory that the tax is levied against someone other than the corporation, from whom the corporation is entitled to reimbursement for payments made for his account.

There is another significant distinction between the statutes under consideration and the Iowa statute. Where a corporation as a collecting agent pays the tax of another it is by virtue of some special statutory requirement. The statutes of Iowa contain no requirement of this kind as to taxes assessed under section 1322 of the code. The obligation of the bank to pay these taxes is predicated upon the general provisions of the Iowa statutes which make all taxes levied upon property the personal obligations of the owners of the property and require them to pay such taxes. On the contrary where corporations by the law of Iowa are required as collecting agents to pay taxes assessed to their stockholders it is by virtue of a special provision, which does not include these banks. This provision is section 1325 of the code of Iowa, set out at page 22 of our opening brief. As a matter of convenience we repeat it here:

The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be

payable by the corporation in the same manner and under the same penalties as in case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his postoffice address, as the same appears upon the books of the company, or is known by its secretary.

Here is a recognition by the legislature of Iowa of the necessity for a special provision to make a corporation a collecting agent and also of its right to a lien to protect the advances it is required to make; the absence of both of these features from the law as to savings banks demonstrates that they were not treated as belonging to this class.

The cases in the state courts accord with those decided here.

Frazer vs. Seibern, 16 Ohio St. 615,

is a case where the tax was levied against the shareholders upon their shares of stock.

A case showing that the Missouri statute contemplated that the shares should be assessed to the shareholder and that the bank should be a mere collecting agency, entitled to reimbursement, as well as that an assessment such as the one at bar, is in fact one on the property of the bank as distinguished from the property of the stockholder, is

St. Louis Building & Savings Association vs, Lightner, 42 Mo. 421.

The proper officers of the corporation made the required

statement of the capital, etc., and deducted a certain sum as representing the value of the United States bonds held by the corporation. The assessor levied the taxes upon the part of the capital thus invested in United States bonds, separately, as "shares of stock in incorporated companies." The court says:

> This was clearly an assessment against the corporation in respect of its capital stock and nothing more. * * *
>
> But the defendant contends this was an assessment and levy of taxes upon "shares of stock" under the provisions of the revenue act of 1863. These provisions contemplate an assessment of shares of stock held and owned by individual owners. *These persons are made taxable by law in respect of the shares of stock owned by them* in the corporation, but the act, instead of requiring them personally to give in a list for taxation made it the duty of the president or other chief officer of the corporation, when called upon by the assessor, to deliver to him "a list of all shares of stock held therein, and the names of the persons" who held the same. The manifest object of this provision was that the assessor might be thus provided with authentic information as to the persons who owned shares of stock in the corporation in order that the shares might *be properly assessed against them.* There would be no rational meaning in any other construction. *In this case there was no attempt to assess shares of stock against the persons owning them. The assessment was made against the corporation,* the assessor being of the opinion that the government bonds were subject to taxation, either as shares of stock or as a part of the capital stock of the corporation. It was called "shares of stock" but the thing intended must have been capital stock and could have been nothing else. To call this "shares of stock" would be simply an irrational use of words. Things are not changed by giving them wrong names. The statute itself is expressed in vague and indefinite terms.' The twentieth section provides that the taxes assessed on shares of stock against the persons owning them, shall be paid in the first instance by the corporation, to be then recovered by the corporation from the owner of the shares or deducted from the dividends accruing on such shares. Whatever might be said of this mode of col-

lecting taxes, we are not now required to give an opinion upon its operation, effect, or constitutionality. It is enough for all the purposes of this case that there was no assessment nor any attempt at an assessment of taxes in the manner contemplated by the special provisions.

Other cases where the tax is assessed directly to the shareholders are:

Adair vs. Robinson, (Texas Civ. App.), 25 S. W. 734;
City of Utica vs. Churchill et al, 33 N. Y. 161, 228;
Bank of Chemung vs. City of Elmira, 53 N. Y. 49;
Batterson vs. Town of Hartford, 50 Conn. 558.

There is not a reported case, either in this court or in the state courts, that is not in harmony with the case to which reference has been made.

III.

The case at bar is not ruled by the cases which have been referred to.

To bring the instant case within the doctrine of the cases that have been referred to is possible only upon the theory that under section 1322 of the Iowa code a savings bank is a mere collecting agency. That this theory is unsound is completely demonstrated by the following considerations:

(a) The language of the law requires the assessment to be made against the bank and not against the shareholders. There is therefore no debt to be collected by this agency. It would be irrational to say that the bank was a collecting agency to collect from itself.

(b) The obligation of the bank to pay this tax grows out of the general statute fixing the obligation of all tax

payers. This is an obligation common to every tax payer and is not the obligation of a collecting agent.

(c) The only section of the Iowa code, section 1325, imposing a liability upon corporations to pay taxes as collecting agents excludes savings banks.

This section is accurately drawn so as to impose that obligation only in cases where the tax is assessed against the stockholder and where, therefore, the obligation would be the obligation of the stockholder alone in the absence of such a statute. Under section 1322 because the assessment is made against the bank there is no obligation on the part of the stockholder; and as the intention of the legislature was to levy this tax directly against the bank, the omission of the special legislation necessary to require a corporation to pay the debt of another was entirely consistent with the general scope of this statute.

(d) No provision is made for the reimbursement of the savings banks, notwithstanding the fact that section 1325 provides for reimbursement and a lien in all cases where corporations are made collecting agents.

This is also consistent, because the law requires the bank to pay the tax itself.

(e) Savings banks have not in the absence of an express provision a right to reimbursement for payments made under section 1322. It was conceded upon the former oral argument of this case that there is no express statutory right in the savings banks of Iowa to demand reimbursement from their stockholders for the amounts paid by them as taxes under section 1322. It is equally clear that there is no implied or common law obligation on the part of the stockholder to reimburse the bank under such circumstances. Such an obligation must inevitably be predicated upon the allegation that the bank has paid

a debt of the stockholder under circumstances giving it an implied right to reimbursement. But here there is no debt of the stockholder. This is demonstrated by the fact that if suit were brought by the state against the stockholder, or if an effort were made to distrain the property of the stockholder, to collect this tax the stockholder could set up, first, that no assessment had ever been made against him; second, that no tax had been levied against him, and third, that there is no law of the state of Iowa under which such an assessment or levy could be made. The fact that it ought to be, is one of the reasons why this law is invalid.

When the bank pays these taxes it does not pay a debt which is the debt of the shareholders, because the law does not provide that the taxes shall be levied against the shareholders, and there is nothing in the statutes which impose upon the shareholders any obligation to pay these or any other taxes except those assessed against them, upon notice, and with certain opportunities to be heard and to appeal.

It is clear, therefore, that there can be no implied right in the bank to reimbursement.

Such an implied right if it existed would, without a lien on the stock, be of absolutely no practical consequence. Upon the assessments made as of January 1st in each year, taxes are levied in September, and become delinquent April 1st and October 1st in the succeeding year. If a bank is assessed on stock owned by A January 1, 1907, it has no assurance that A will own the stock, or be solvent, or within reach in October, 1908, when the second payment of taxes is made. The considerations to which we have called attention render impossible the conclusion that it was the purpose of the legislature of Iowa by section 1322 of the

Iowa code to make savings banks merely collection agents as to these taxes.

IV.

Section 1322 discriminates against savings banks.

Our purpose here is to show that under the decision of the Supreme Court of Iowa here complained of a manifest discrimination and injustice is done the holders of stock in savings banks, which, it would seem, could not have been within the contemplation of the legislature of Iowa. We think it is only necessary to compare the statutory provisions with respect to holders of stock in national banks and state banks, for it can hardly be seriously contended that the legislature of Iowa ever meant to discriminate against the holders of stock in its own banks, both state and savings.

That shares of stock in banks are "credits" of the shareholder has been determined by the Supreme Court of Iowa. This was admitted by counsel for the defendant in error on oral argument in this case, and will not be contradicted by them in any reply which shall be made to this argument.

It has been repeatedly held by the Supreme Court of Iowa that the holder of stock in a national bank may set off against his assessment upon such stock, indebtedness owing by him, because of the statute allowing the setting off of debts against credits for the purposes of taxation.

First National Bank vs. City Council, 86 Iowa 28.

The same rule was announced by this court under a statute of the state of New York in

People vs. Weaver, 100 U. S. 539.

It was conceded by counsel for defendant in error upon

the oral argument before this court that under section 1322 of the code of Iowa and other statutes relating to the subject of taxation of bank shares no opportunity is given to the holder of shares of stock in state or savings banks to deduct the debts of such holders from the levy made against the bank itself under section 1322. We speak of this concession not as a matter of comment, for it could not be avoided. We refer to it only as obviating the necessity for any argument on our part upon this proposition. The question was asked in the course of the oral argument upon the former submission of this case, whether such deduction had been asked in this particular case and refused. We stated then, as we state now, that no such deduction was asked, and submit that no such deduction would be possible. The assessment was against the bank *in solido*. One stockholder might have $1,000 of stock and no deduction for debts; another stockholder might have $2,000 of stock and $500 of debts to be deducted from an assessment if made against him. The shares of stock were assessed against the bank in a lump sum, and the credit for deduction would necessarily be in a lump sum. This deduction would not be distributed pro rata, but would necessarily have to be figured out by the bank and distributed where it belonged. No such system is created by the statute, and that it could not have been in contemplation by the legislature is shown by the fact that the assessment is not against the shareholders.

In

National Bank of Virginia vs. City of Richmond, 42 Fed. 877,

referred to in our brief, pp. 43-4, where the form of assess-

ment was very similar to the assessments in the cases now before the court, the court said:

By the law of Virginia, every person assessed for a tax upon his personal property has a right to deduct from the valuation the amount of his indebtedness, so that he may be charged only with taxes on what he owns, when a balance is struck between him and his creditors. To assess the bank on all its shares *in solido* is to prevent entirely a shareholder therein from this benevolent and just provision of law.

Under section 1311 of the code of Iowa applying to the subject of deducting debts, it is only the debts of the person who is being taxed which may be offset. Certainly under the statutes of Iowa, as interpreted by the supreme court of that state, the person being taxed is the bank, for the tax is levied directly against it. There could, therefore, be no right to offset the debts of the stockholders against such a tax.

Again, if section 1322 authorizes an assessment to state and savings banks of the stock of their stockholders, then another discrimination against such banks in favor of national banks is found in section 1325, as we have already pointed out. This latter section gives to national banks the right to recover from each stockholder his proportion of the taxes so paid with a lien on his stock and unpaid dividends therefor, and does not give any such right to state and savings banks.

Section 1311 is the provision of the code of Iowa relating to the deduction of debts from assessments of moneys and credits. This section is as follows:

In making up the amount of money or credits which any person is required to list, or to have listed or assessed, including actual value of any building and loan shares, *he will be entitled to deduct* from the actual value thereof

the gross amounts of *all debts in good faith owing by him,* but no acknowledgment of indebtedness not founded on actual consideration and no such acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made will be bound to contribute; but no person will be entitled to any deduction on account of any deposit or security note given in aid of the organization of a mutual insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation or company; and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds or other non-taxable property.

Under this section it is only the debts of the person who is being taxed that may be offset. Under section 1322 as construed by the supreme court of the state the tax is levied against the bank and it is the person which is taxed. Under this statute therefore, the bank would have no right to offset debts of its stockholders against the assessment against the bank. This conclusion is emphasized by the fact that these stockholders would have the right to offset these debts against their own moneys and credits and would undoubtedly insist upon so doing, and by the further fact that the law provides no means by which the bank could require the stockholders to advise it of the amount of their debts, or to aid it in obtaining any offset on account of them.

Here again the inequity arises out of the fact that the statute requires the assessment to be made against the bank, and further emphasizes the radical difference be-

tween this statute and the statutes to which we have referred, which require the assessment to be made against the shareholder.

Respectfully submitted,

N. T. GUERNSEY,

Attorney for People's Savings Bank, Plaintiff in Error.

GEORGE F. HENRY,

Attorney for Des Moines Savings Bank, Plaintiff in Error.

Brief and Argument of Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 350.

HOME SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

W. H. Bremner and M. H. Cohen,
Attorneys for Defendants in Error.

Service of the within Brief and Argument is hereby accepted and acknowledged this.....day of.....1906.

.....

.....

Attorneys for Plaintiff in Error.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

Statement.

The plaintiff in error is a corporation organized and existing under the laws of the State of Iowa, pertaining to savings banks. In the year 1902, the Assessor of the City of Des Moines made an assessment for taxation against the shares of stock of said bank, in accordance with the provisions of Section 1322 of the Code of Iowa. The plaintiff, in error, was the owner of government bonds of the United States to the amount of $32,675.00 and in determining the value of its shares of stock for taxation no deduction was made on account of said bonds. The plaintiff, in error, thereupon appeared before the City Council of the City of Des Moines, Iowa, sitting as a Board of Review in accordance with the provisions of the laws of Iowa, and filed a written complaint (Transcript, page 19), asking that the amount of its capital invested in government bonds be deducted in determining the valuation of the property to be assessed to it. The Board of Review refused to make the deduction and thereafter the plaintiff in error, appealed to the District Court of Iowa, in and for Polk County, complaining of the action of the Board of Review. Thereafter the said District Court dismissed said appeal (Transcript page 19). Thereafter and on the 21st day of March, 1904, the plaintiff, in error, duly appealed to the Supreme Court of Iowa, where the assessment was again sustained. (Transcript page 21.) To reverse this judgment of the Supreme Court of Iowa, the writ of error has been sued out in this case.

This case involves the validity of Section 1322 of the Code of 1897 of Iowa, which is as follows:

"Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. Shares of stock of state and savings banks and loan and trust com-

panies shall be assessed to such banks and loan and trust companies and not to the individual stockholders. At the time the assessment is made, the officer of the national banks shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed."

PROPOSITIONS INVOLVED.

I.

The form of the assessment.

The assessment is not void merely because it was assessed in the wrong name.

Weston & Co. vs. Cass Co., 69 Iowa, 147;
First National Bank vs. Concord, 59 N. H., 75.

The decision of the Supreme Court of Iowa as to the form of the assessment and failure to comply with the state statute in relation to the method of procedure is binding on the Supreme Court of the United States.

Stanley vs. Supervisors of Albany, 121 U. S., 535;
Palmer vs. McMahon, 133 U. S., 662.

Questions not raised in the lower court will not be considered on appeal.

Sunley vs. Metropolitan Life Ins. Co., 105 N. W., 408 (Iowa);
McCormick Harvester Co. vs. McCormick, 103 N. W., 204 (Iowa);
Stelpflug vs. Wolfe, 102 N. W., 1130 (Iowa);
Hamilton Mfg. Co. vs. Mass., 6 Wall., 632.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
L. & N. R. R. vs. Ky., 183 U. S., 503-507.

Construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

German Am. Sav. Bank vs. Burlington, 118 Iowa, 84;
National State Bank vs. Burlington, 119 Iowa, 696;
First National Bank vs. Independence, 123 Iowa, 482.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

Van Allen vs. Assessors, 3 Wallace, 584;
First National Bank vs. Farwell, 10 Bissell, 270;
People vs. Commissioners, 4 Wallace, 244;
National Bank vs. Miller, 19 Federal R., 378.
National Bank vs. Commonwealth, 9 Wallace, 353;
Cleveland Trust Co. vs. Lander, 184 U. S., 111.

A tax on the shares of stock of a bank is not a tax on its capital stock.

Van Allen vs. Assessors, 3 Wallace, 573;
Palmer vs. McMahon, 135 U. S., 662;

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
German Am. Savings Bank vs. Burlington, 118 Iowa, 84;
First National Bank vs. Independence, 123 Iowa, 482.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

Primghar State Bank vs. Rerick, 96 Iowa, 238;
German Am. Savings Bank vs. Burlington, supra;
National Bank vs. Commonwealth, 9 Wallace, 353;
First National Bank vs. Douglas Co., 3 Dillon, 330;
Lionberger vs. Rouse, 9 Wallace, 470.

The statute is not void because it does not provide for personal notice to the shareholders.

National Bank vs. Dodge, Assessor, 119 Fed., 57;
Palmer vs. McMahon, 133 U. S., 662;
Merchants' and Mfg. Nat'l. Bank vs. Commonwealth, 17 S. C. R., 829;
St. Clara Co. vs. Southern Pac. R. Co., 8 U. S., Circuit Court of Appeals, 401.

Section 1370 of the Code of Iowa prescribes: "That the city or town council shall constitute the Board of Review for such city or town. The Board shall meet on the first Monday of April at the office of the city or town clerk and sit from day to day until its duties are completed, and shall adjust assessments for the city or town."

Section 1373 of the Code of Iowa provides: "Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction * * * and appeals may be taken from the action of the board with reference to such complaint to the District Court of the county in which said board holds its sessions. * * * The Court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, * * *"

ARGUMENT.

I.

The form of the assessment made.

The plaintiff, in error, attacks the form of the assessment, claiming the assessment as actually made was upon monies and credits and not upon shares of stock, as required by Section 1322. The Supreme Court of Iowa, however, has determined that the assessment was properly made under the provisions of Section 1322 of the Code, and its decision upon this point is binding upon this Court. As was stated by Mr. Chief Justice Fuller in the case of *Palmer vs. McMahon,* 133 U. S., page 662, on page 665 of the opinion:

"We are bound by the decision of the Court of Appeals of the state of New York adversely to the plaintiff, in error, as to failure to comply with the state statute in relation to the method of procedure, form of assessment, oath of assessors, etc."

Furthermore, the plaintiff, in error, was notified by the assessor before the convening of the City Council as a Board of Review that it was to be assessed upon corporation stock (Transcript page 15). The testimony of Jacob J. Beck, who was the deputy assessor, who made the assessment against the plaintiff, in error, is to the effect that the assessment was made upon the shares of the capital stock of the plaintiff in error (Transcript page 18). In addition to this, the plaintiff, in error, failed to make any complaint before the Board of Review as to the form of assessment. Its complaint before the Board of Review is set out on pages 13 and 14 of the Transcript, and only asks for a reduction on account of the government bonds held by it.

Section 1373 of the Code of Iowa, which is heretofore quoted, provides that upon appeal to the District Court from the action of the Board of Review, the Court shall hear and determine anew all questions arising before the board. In other words,

no question not raised before the Board of Review can afterwards be raised in the Courts of the state.

While it is true that cases in equity are triable *de novo* in the Supreme Court of Iowa, and that no assignment of errors is required under that name, yet by Rule 54 of the Supreme Court of Iowa it is provided as follows:

"Brief of appellant shall contain a short and clear statement disclosing; first, the nature of the action; second, what the issues were; third, * * *; fourth, the errors relied upon for a reversal; fifth, * * * No alleged error or point not contained in this statement of points shall be raised afterwards either by reply brief, or any oral or printed argument, or on petition for a rehearing."

The Supreme Court of Iowa has repeatedly held that it would not consider any point not raised in the brief and argument.

In the case of *Sunley vs. Metropolitan Life Insurance Co.*, 105 N. W., 403, the Supreme Court of Iowa said:

"It is a plain requirement of our rules that the errors relied upon shall be specifically pointed out and where this is not done we will not hold the case and search the record through for ourselves to ascertain if any error was committed."

No question was raised before the Supreme Court of Iowa except questions pertaining to the validity of Section 1322 of the Code of Iowa. (Transcript page 20.) The assessment was treated in all respects in the Supreme Court of Iowa as though made properly under the provisions of Section 1322. The same brief and argument was filed in the Supreme Court in this case and in the case of the *Des Moines Savings Bank vs. The City of Des Moines* and the *People's Savings Bank vs. The City of Des Moines*, and in the statement of the case contained in that argument, it is said:

"Stating it broadly, the question presented in each of these cases is whether Section 1322 of the Code, as construed in the cases to which we have referred, contravenes the provisions of the federal statutes and constitution touching the taxation of bonds of the United States. Each case presents the same funda-

mental question; and because of its fundamental character, a detailed statement of the case is unnecessary."

This Court will not consider questions which are not raised in the Court from which the case comes.

As stated in the case of *Hamilton Manufacturing Co. vs. Massachusetts*, 6 Wallace, 632:

"Questions not decided in the state Court because not raised and presented by the complaining party will not be re-examined in this Court on a writ of error sued out under the 25th section of the Judiciary Act. Apart from the question of jurisdiction, it is necessary that it shall appear that the question presented for decision in this Court was raised in the state Court, and that the decision of the state Court was given as required in that section. Clear and necessary intendment that the question was raised and must have been decided as claimed, in order to have induced the judgment, is sufficient, but it is not sufficient to show that such a question might have arisen and been applicable to the case, unless it appears in the record that it did arise and was applied by the state Court in disposing of the controversy."

Even if it be true that the assessment against the bank was made on the assessment roll against monies and credits or corporation stock, the assessment would not be void merely because made in the wrong name. The most that could be said would be that it was voidable, and if the plaintiff was prejudiced, it should have made objections as to the form before the Board of Equalization and before the Supreme Court of Iowa, and having failed to do that, it has waived its right to make any objection to the assessment on that ground.

In the case of *Weston vs. Cass County*, 69 Iowa, 147, nursery stock was assessed as personal property and the Court said:

"The nursery stock was not personal property; it was a part of the realty. The assessor should have made but one estimate of the land and nursery stock. It was error to make separate assessments, but we are unable to see how the plaintiffs were prejudiced by the error. The rate of taxation on real and personal property is the same."

The Court further said: "If there was any object in making the correction, application should have been made to the Board of Equalization."

In the case of the *First National Bank vs. Concord,* 59 N. H., 75, a question analagous to the one under consideration was raised and the Court said:

"A tax assessed against a national bank for money on hand at interest or deposit will not be abated by the Court on appeal because the words 'surplus capital' used in the statute were not employed by the assessor."

It follows then that the question of whether the assessment was made in proper form is not before this Court, and it is to be treated as an assessment made in proper form under Section 1322 of the Code of Iowa.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

In the case of *L. & N. R. R. Co. vs. Kentucky,* 183 U. S., 503, it is stated on page 508 of the opinion:

"This Court must accept the meaning of the state enactments to be found in them by the state Court."

And in the case of *Cleveland Trust Co. vs. Lander,* reported in the 184 U. S., page 111, on page 115 of the opinion it is said:

"What the Constitution of the state of Ohio requires or what the statutes of the state require as to taxation must be left to be decided by the Supreme Court of the state, and whether that Court has decided logically or illogically that a tax authorized by the laws of the United States on the shares of the company satisfies the Constitution of the state as a tax on the corporation, it is not open to our review or objection."

The construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

The case of the *German American Savings Bank of Burlington vs. Council of the City of Burlington,* reported in the 118 Iowa,

at page 84, is the first case in which the Supreme Court of Iowa had occasion to pass upon Section 1322 of the Code. In that case, the City Council of the City of Burlington, acting as a Board of Review, assessed to the plaintiff the shares of stock of the bank after adding thereto the surplus and profits in its hands, and after deducting therefrom the value of the real estate owned by the bank. The bank at that time held government bonds of the face value of $100,000.00, which were held as a part of its capital stock. The bank made the claim before the Board of Review and before the District Court that it was entitled to have these bonds deducted from the amount of its assessment because not taxable. The District Court upheld this contention, and the case was appealed to the Supreme Court of Iowa. The material part of the opinion of the Supreme Court is as follows:

"Section 1322 of the Code provides that 'shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies, and not to the individual stockholders.' The contention of the appellee that the assessment in this case was in fact upon the capital of the bank, instead of an assessment of the shares of stock, is not sustained by the record. On the other hand, it appears clearly to us that the council intended to assess the shares of stock to the bank as provided in the section referred to, and that the assessment was so made in fact. There is a well-defined and well-recognized distinction between the capital of a bank and the shares of its stock. Indeed, we do not understand that this proposition is seriously questioned by the appellee. *First National Bank of Louisville vs. Kentucky,* 9 Wall. 358 (19 L. Ed. 701); *Farrington vs. Tennessee,* 95 U. S., 686 (24 L. Ed. 558). The shares of stock having been assessed to the bank as provided by law, instead of to the stockholders, may the bank deduct from such assessment the United States bonds held by it as a part of its capital, because of their exemption from taxation? The negative of this proposition is well settled by the highest authority. The tax on the shares of stock of a bank is not a tax on its capital. *Van Allen vs. Assessors,* 3 Wall., 573 (18 L. Ed. 229); *Farrington vs. Tennessee, supra; Railroad Co. vs. Morrow,* (Tenn.), 11 S. W. Rep., 348 (2 L. R. A. 853); *Hubbard vs. Board,* 23 Iowa, 130; *Bank vs. Rerick,* 96 Iowa, 238. See also note in *McHenry vs. Downer* (Cal.), 45 L. R. A., 737 (s. c. 47 Pac.

Rep. 779), on the subject generally. The tax in this case, not being on the capital of the bank, but upon the shares of stock held by the individuals, the bank had no right to deduct therefrom its United States bonds. *First National Bank of Louisville vs. Kentucky, supra; Palmer vs. McMahon,* 133 U. S. 666, 10 (Sup. Ct. Rep. 324, 33 L. Ed. 772); *Trust Co. vs. Lander* (Ohio), 56 N. E. Rep. 1036, and *Trust Co. vs. Lander* (22 Sup. Ct. Rep. 394, 46 L. Ed. 456). And it is in this respect that the case at bar is distinguished from *Ottumwa Sav. Bank vs. City of Ottumwa,* 95 Iowa, 176, and *State Exch. Bank of Parkersburg vs. Town of Parkersburg,* 112 Iowa, 104, in both of which cases the question of the taxation of the capital of the bank was alone involved. Whether, under this statute, the capital may be taxed as well as the shares of stock, we do not determine, for no such question is before us, no attempt having been made to tax the capital of the bank. The statute under consideration is simply an enlargement of Chapter 39 of the acts of the 23rd General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act, it was held in *Bank vs. Rerick,* 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that 'as the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends or reserving a surplus, the payment of the tax by the corporation instead of by the individual stockholder, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

This decision followed the rule laid down in *Primghar State Bank vs. Rerick,* 96 Iowa, 238, which case was decided under Section 1 of Chapter 39 of the Acts of the 23d General Assembly, which section provided:

"That all shares of the capital stock of banking associations organized under the general incorporation laws of the state known as state or commercial banks, shall be assessed to such banks in the city or town wherein located, and not to the individual shareholders."

The Supreme Court of Iowa in the above quoted opinion construes Section 1322 of the Iowa Code to mean that it is the shares of stock of savings banks which are to be assessed, and not the capital stock. It recognizes the distinction between the shares of stock and capital stock, and this Court under the rule heretofore suggested must treat this section of the Code of Iowa as authorizing an assessment against shares of stock. The Supreme Court of Iowa further determined that the payment of the taxes assessed against the shares of stock of the bank was in effect a payment by the shareholders, inasmuch as the property of the bank was the property of the shareholders. It was not decided, nor did the Supreme Court of Iowa say, either in this opinion or in the opinion in the case of *Primghar State Bank vs. Rerick,* as claimed by the plaintiff in error, that the tax was, in effect, a tax upon the property owned by the bank as a corporation and that therefore the owner of the property paid the tax. The plaintiff in error, has misconstrued the opinion. What the Supreme Court of Iowa said in the Primghar State Bank case was:

"As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes."

This language was quoted and approved in the case of the *German American Savings Bank vs. Burlington, supra.* The Court further determined that a tax upon shares of stock without deducting, in ascertaining the value thereof, the bank's holdings of government bonds is not a tax upon the bonds.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

A tax on the shares of stock of a bank is not a tax on its capital stock.

It has long been the established rule, not only for the state Courts, but the Federal Courts as well, that, in fixing the value of shares of stock for the purpose of taxation, government bonds owned by the bank need not be deducted. The earliest case on that proposition is the case of *Van Allen vs. Assessors,* 3 Wallace, 584. The Court in that case said:

"The main and important question involved, and the one which has been argued at length and with eminent ability, is whether the state possesses the power to authorize the taxation of the shares of stock of these national banks in the hands of the stockholders, whose capital is wholly invested in stock and bonds of the United States?

"The Court is of the opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of.

"The suggestion is that it is a tax by the state upon the bonds of the government which constitutes the capital of the bank and which this Court has heretofore decided to be illegal. But this suggestion is scarcely well founded. * * * The tax is the condition for the new rights and privileges conferred upon these associations.

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own * * *.

"The interest of the stockholder entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the share holder like any other property that may belong to him. Now, it is this interest

which the act of Congress has left subject to taxation by the states, under the limitations prescribed."

The principle enunciated in the above case has since been reaffirmed by the Supreme Court of the United States and followed by later decisions.

In the case of the *First National Bank vs. Farwell,* 10 Bissell, 270 (U. S. Circuit Court), the Court said:

"This is a bill filed by the plaintiff to restrain by injunction the collection of a tax by the defendant, for the reason, as alleged, that this provision of the statute has been violated by the assessment of the shares of stock of the plaintiff in this case. It is stated in the bill that no allowance was made by the assessors for the amount of capital and surplus invested in government bonds. This is answered, showing that such allowance need not be made by the case of *Van Allen vs. Assessors,* and the case of *People vs. Commissioners,* 4 Wallace, 244."

In *Exchange National Bank vs. Miller,* 19 Fed. Rep., 379, it is said:

"Unless the taxation on the shares in national banks is indirectly a tax on the property of the bank, there is no discrimination in favor of the individual banker and the unincorporated bank. But in *Van Allen vs. Assessors,* 3 Wallace, 573, the Supreme Court of the United States decided that a tax on the shares is not a tax on the capital of the bank. They state as a familiar law that the corporation is the legal owner of all of the property of the bank, real and personal, and that the interest of the shareholders is a distinct independent interest or property, held by the shareholder like any other property that may belong to him, and that it is this interest which the act of Congress has left subject to taxation by the states. Chief Justice Chase, for himself and Associate Justices Wayne and Swayne, in a dissenting opinion, argued with great power that taxation on shares in national banks, without reference to the amount of their capital invested in bonds of the United States, was actual, though indirect, taxation of the bonds, but the holding of the majority of the Court was affirmed in *People vs. Commissioners,* 4 Wall., 244, and has since remained as settled law. So that the dissenting opinion of the Chief Justice only strengthens the authority of *Van Allen vs. Assessors.*"

The plaintiff in error, in its argument would lead one to believe that the Federal statutes authorize the state in case of national

banks to assess government bonds owned by said national banks, and predicates its claim on Section 5219 of the Revised Statutes of the United States. The section just cited provides as follows:

"Nothing shall prevent all the shares of any association from being included in the valuation of personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal taxes to the same extent according to its value as other real property taxed."

The above section does not confer power on the state to tax United States Bonds, but only confers power on the state to tax the shares of stock of such banks. Without this section or statute the state would be without power to tax the shares of stock in national banks. No Federal authority is required to authorize the state to tax the shares of stock of its own banks, such as savings or state banks. Savings banks are creatures of the state, and are subject to all conditions imposed upon them by the state so long as there is no class discrimination, and the state has the power to require the banks to pay the tax on its shares of stock.

As suggested by Mr. Justice McKenna, in the opinion in the case of *Cleveland Trust Co. vs. Lander,* 184 U. S., 111, on page 113:

"The argument of the plaintiff in error claims greater immunity from taxation for the shares of the trust company than Section 5219 of the Revised Statutes of the United States gives to shares in national banks."

It requires but a mere statement of this proposition for it to be denied.

State and savings banks are creatures of the state and are sub-

ject to all of the conditions imposed upon them by the state. It has the power to compel them to contribute towards the support of the state, or the sub-divisions thereof, and has the right to say how the contribution shall be paid. It has the power to say how much taxes it shall pay, and in what manner they shall be paid, whether on the capital stock or shares of stock, or a per cent on its deposits, or in any other manner the legislature may think best. In respect to taxes, its power is absolute, unless prohibited by the Constitution of the United States. If the tax is oppressive or unjust, the legislature has the right to remedy the evil, if one exists, and not the courts. The province of the Court is to interpret the statute and make known the intent of the legislature, and when the highest Court of the state has placed a construction on a statute, the interpretation so given, whether logical or not, is the law, and if the effect of such construction works a hardship or burden on the corporation, it must appeal to the legislature for relief.

In the Delaware Railroad Tax case, reported in the 18 Wallace, page 206, 231, the Court said:

"The state may impose taxes upon the corporation as an entity existing under its laws as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than are prescribed by the legislature of the state."

In the case of *Society for Savings vs. Coite,* 6 Wallace, 594. the plaintiff was required to pay a certain tax on its deposits and a certain portion of its deposits were invested in United States bonds, and for that reason they attempted to have the amount of deposits invested in government bonds deducted from the amount on which the tax was to be assessed, on the ground that government bonds were exempt from taxation, but the Court held that it was a franchise tax and that the Society was not exempt

from taxation to the extent of the deposits invested in government bonds.

It rests with the legislature of Iowa to say what conditions shall be imposed upon the right of a savings bank to do business in Iowa, and if it chooses to require as one of those conditions that it pay the taxes assessed against its shares of stock, it has the right to so do, and the Courts will not interfere with the exercise of that right.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

A state law which requires a bank to pay the tax which is rightfully laid on the shares is valid. In the case of the *National Bank vs. Commonwealth,* reported in 9 Wallace, 353 the Court said:

"It is strongly urged that it is to be deemed a tax on the capital of the bank because the law required the officers of the bank to pay this tax on the shares of its stockholders. Whether the state has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a tax on these shares. It has been the practice of many of the states for a long time to reqiure of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only, mode of doing this in all the New England states, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the state of the bank and paid over to the local municipal authorities. * * * If the state cannot require of the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject."

The Court further states: "It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional. We do not see the remotest probability in their being required to pay the tax which their stockholders owe to the state for the shares of their capital stock, when the law of the Federal government authorized the tax."

As was stated by the Supreme Court of Iowa in the case of the *German American Savings Bank vs. Burlington, supra:*

"The statute under consideration is simply an enlargement of Chapter 39 of the Act of the 23d General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act it was held in *Bank vs. Rerick*, 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that, 'As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends, and reserving a surplus, the payment of the tax by the corporation, instead of by the individual stockholders, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

It is the latter part of this expression of the Supreme Court of Iowa that the plaintiff in error has construed into a statement that the bank owned the property which was assessed under Section 1322 of the Code, but a reading of the whole opinion shows that what the Supreme Court of Iowa intended was that the owners of the shares of stock in effect paid the taxes. As a general proposition, a state may provide for the assessment of savings bank capital as well as other property in such mode as it may deem most convenient and effective for the collection of its revenue.

The statute is not void because it does not provide for personal notice to the shareholders.

The plaintiff in error attacks the validity of the statute in question (Section 1322 of the Code), and contends that there is a lack of due process of law in that it does not provide for personal notice to the stockholders of the proceedings by which the assessment of their shares is to be made. This question was raised and

determined in the case of *Nevada National Bank vs. Dodge, Assessor,* reported in the 119 Federal Reporter, 57. In that case the law did not require any notice to be given to the shareholders, but the statute authorizing the assessment was held valid. The statute in that case provided as follows:

"The assessor charged by law with the assessment of said shares shall within ten days after he has made such assessment give written notice to each national banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act."

The Court, in rendering the opinion, stated as follows:

"We are unable to assent to the proposition that the notice thus provided for is insufficient, when considered in connection with other sections of the Code of the state, which provide for a Board of Equalization, with power to hear complaints respecting the justice of any assessment, and also prescribe the time and place when and where such complaint may be heard. The shares of national banking associations are assessed under a general law, of which the stockholders must take notice; and the time and place when and where a stockholder may appear for the purpose of applying for a reduction of the valuation placed upon his property is fixed by general law, of which he must also take notice. This we think, under all the authorities, sufficient notice of the proceedings for the assessment and taxation of property."

In the case of *Palmer vs. McMahon,* reported in the 133 U. S., 662, the Court said:

"The power to tax belongs exclusively to the legislative branch of the government; and when the law provides for a mode of confirming or contesting the charge imposed with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law."

In the case of *Merchants' & Manfg. National Bank vs. Commonwealth,* reported in the 17 Supreme Court Rep., 829, Justice Gray said:

"A final objection is that there is a lack of due process of law in that the property of the stockholders is subject to an *ad valorem* tax without an opportunity being given to them to be heard as

to the value. It is true the statute contemplates no personal notice to the shareholders, but that has never been considered essential to due process of law in respect to taxation."

The Court further said: "And a notice to all property holders of the time and place at which the assessment is to be made is all that 'due process' requires in respect to the matter of notice in the proceedings."

In the case of *Santa Clara Co. vs. Southern Pac. R. Co.*, reported in the 8 U. S., Circuit Court of Appeals, 401, the Court said:

"The great preponderance of authority is to the effect that if a statute, of which all persons are bound to take notice, specifies the day and place when the Board of Equalization shall meet, a person affected by its action cannot complain that such action was without notice to him. And on the same principle, a published general notice of the meeting of the Board of Equalization is sufficient to give authority to act upon individuals."

Section 1370 of the Code of Iowa provides that the City Council shall constitute a local Board of Review for the city, and provides that the board shall meet on the first Monday in April at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, and shall adjust assessments for the city.

Section 1373 of the Code of Iowa provides that any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, and further provides for appeals from the action of the Board of Review upon such written complaints. It surely cannot be contended that under the statutes of Iowa a person has not ample opportunity to complain of any assessment which in any manner affects him and to have the assessment reviewed.

It is also claimed by the plaintiff in error that shareholders in savings banks are denied equal protection of the laws, inasmuch as they are not allowed to deduct their debts from the valuation of their shares of stock, while shareholders in national banks are. The right of deduction is a statutory, and not a Constitutional,

right. In reference to this question, the Supheme Court of Iowa, in the case of *Primghar State Bank vs. Rerick*, 96 Iowa, 238, says:

"If it be true that shareholders of the capital stock of banks which fall within the provisions of the act under consideration cannot deduct their debts from the amount of their stock for the purposes of taxation, is the act valid? We are of the opinion that it is. The fact that national banks and banks organized under the general incorporation laws of this state transact similar kinds of business does not show that they must be taxed according to the same plan. National banks are organized and exist by virtue of Acts of Congress. They are instruments of the general government, designed to aid in the administration of a branch of the public service. The states cannot exercise control over them, excepting with the consent of Congress, expressed or implied, and the power of the states to tax them is derived from that source. *Bank vs. Dearing*, 91 U. S., 29; *First National Bank of Albia vs. City Council of Albia, supra.* They are subject to regulations and limitations of power which have no application to state banks, and constitute a class of corporations which may be properly subjected to a plan of taxation different from that applied to state banks. The latter constitute another class, with distinct powers and privileges, and subject to different restrictions, and may properly be subject to a plan of taxation applicable only to that and similar classes."

No one has any right to deduct from the amount for which he is assessed the amount of his debts, except by virtue of a statute, and the Constitution is satisfied if deductions are allowed alike to all persons who fall within the same class.

W. H. BREMNER,
M. H. COHEN,
Attorneys for Defendants in Error.

Brief and Argument of Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 83.

PEOPLE'S SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

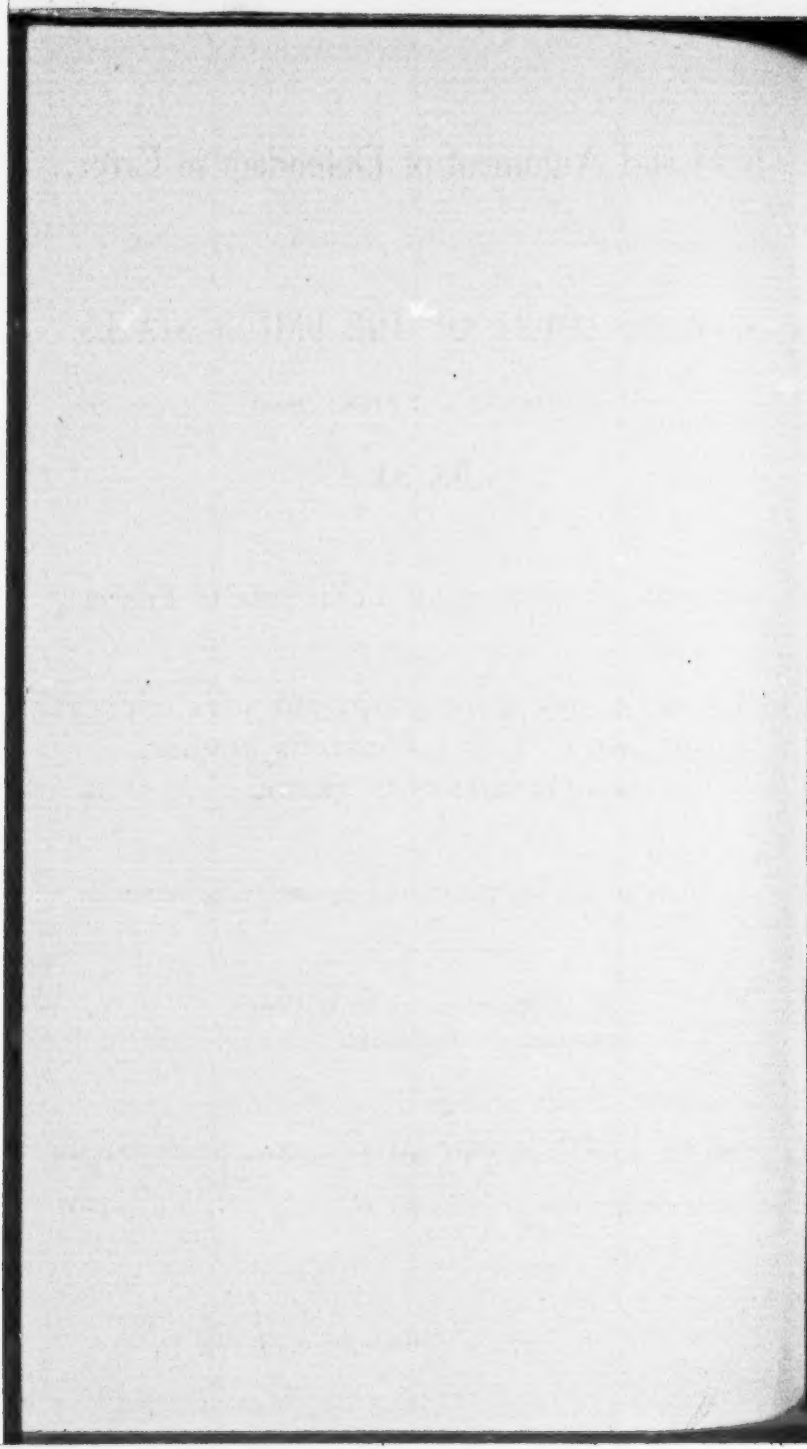
W. H. Bremner and M. H. Cohen,
Attorneys for Defendants in Error.

Service of the within Brief and Argument is hereby accepted and acknowledged this.....day of.....1906.

.....

.....

Attorneys for Plaintiff in Error.



BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

Statement.

The plaintiff in error is a corporation organized and existing under the laws of the State of Iowa, pertaining to savings banks. In the year 1902, the Assessor of the City of Des Moines made an assessment for taxation against the shares of stock of said bank, in accordance with the provisions of Section 1322 of the Code of Iowa. The plaintiff, in error, was the owner of government bonds of the United States to the amount of ~~$32,675.00~~ 62,060.0 and in determining the value of its shares of stock for taxation no deduction was made on account of said bonds. The plaintiff, in error, thereupon appeared before the City Council of the City of Des Moines, Iowa, sitting as a Board of Review in accordance with the provisions of the laws of Iowa, and filed a written complaint (Transcript, page 19), asking that the amount of its capital invested in government bonds be deducted in determining the valuation of the property to be assessed to it. The Board of Review refused to make the deduction and thereafter the plaintiff in error, appealed to the District Court of Iowa, in and for Polk County, complaining of the action of the Board of Review. Thereafter the said District Court dismissed said appeal (Transcript page 19). Thereafter and on the 21st day of March, 1904, the plaintiff, in error, duly appealed to the Supreme Court of Iowa, where the assessment was again sustained. (Transcript page 21.) To reverse this judgment of the Supreme Court of Iowa, the writ of error has been sued out in this case.

This case involves the validity of Section 1322 of the Code of 1897 of Iowa, which is as follows:

"Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. Shares of stock of state and savings banks and loan and trust com-

panies shall be assessed to such banks and loan and trust companies and not to the individual stockholders. At the time the assessment is made, the officer of the national banks shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed."

PROPOSITIONS INVOLVED.

I.

The form of the assessment.

The assessment is not void merely because it was assessed in the wrong name.

Weston & Co. vs. Cass Co., 69 Iowa, 147;
First National Bank vs. Concord, 59 N. H., 75.

The decision of the Supreme Court of Iowa as to the form of the assessment and failure to comply with the state statute in relation to the method of procedure is binding on the Supreme Court of the United States.

Stanley vs. Supervisors of Albany, 121 U. S., 535;
Palmer vs. McMahon, 133 U. S., 662.

Questions not raised in the lower court will not be considered on appeal.

Sunley vs. Metropolitan Life Ins. Co., 105 N. W., 408 (Iowa);
McCormick Harvester Co. vs. McCormick, 103 N. W., 204 (Iowa);
Stelpflug vs. Wolfe, 102 N. W., 1130 (Iowa);
Hamilton Mfg. Co. vs. Mass., 6 Wall., 632.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
L. & N. R. R. vs. Ky., 183 U. S., 503-507.

Construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

German Am. Sav. Bank vs. Burlington, 118 Iowa, 84;
National State Bank vs. Burlington, 119 Iowa, 696;
First National Bank vs. Independence, 123 Iowa, 482.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

Van Allen vs. Assessors, 3 Wallace, 584;
First National Bank vs. Farwell, 10 Bissell, 270;
People vs. Commissioners, 4 Wallace, 244;
National Bank vs. Miller, 19 Federal R., 378.
National Bank vs. Commonwealth, 9 Wallace, 353;
Cleveland Trust Co. vs. Lander, 184 U. S., 111.

A tax on the shares of stock of a bank is not a tax on its capital stock.

Van Allen vs. Assessors, 3 Wallace, 573;
Palmer vs. McMahon, 135 U. S., 662;

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
German Am. Savings Bank vs. Burlington, 118 Iowa, 84;
First National Bank vs. Independence, 123 Iowa, 482.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

Primghar State Bank vs. Rerick, 96 Iowa, 238;
German Am. Savings Bank vs. Burlington, supra;
National Bank vs. Commonwealth, 9 Wallace, 353;
First National Bank vs. Douglas Co., 3 Dillon, 330;
Lionberger vs. Rouse, 9 Wallace, 470.

The statute is not void because it does not provide for personal notice to the shareholders.

National Bank vs. Dodge, Assessor, 119 Fed., 57;
Palmer vs. McMahon, 133 U. S., 662;
Merchants' and Mfg. Nat'l. Bank vs. Commonwealth, 17 S. C. R., 829;
St. Clara Co. vs. Southern Pac. R. Co., 8 U. S., Circuit Court of Appeals, 401.

Section 1370 of the Code of Iowa prescribes: "That the city or town council shall constitute the Board of Review for such city or town. The Board shall meet on the first Monday of April at the office of the city or town clerk and sit from day to day until its duties are completed, and shall adjust assessments for the city or town."

Section 1373 of the Code of Iowa provides: "Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction * * * and appeals may be taken from the action of the board with reference to such complaint to the District Court of the county in which said board holds its sessions. * * * The Court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, * * *"

ARGUMENT.

I.

The form of the assessment made.

The plaintiff, in error, attacks the form of the assessment, claiming the assessment as actually made was upon monies and credits and not upon shares of stock, as required by Section 1322. The Supreme Court of Iowa, however, has determined that the assessment was properly made under the provisions of Section 1322 of the Code, and its decision upon this point is binding upon this Court. As was stated by Mr. Chief Justice Fuller in the case of *Palmer vs. McMahon,* 133 U. S., page 662, on page 665 of the opinion:

"We are bound by the decision of the Court of Appeals of the state of New York adversely to the plaintiff, in error, as to failure to comply with the state statute in relation to the method of procedure, form of assessment, oath of assessors, etc."

Furthermore, the plaintiff, in error, was notified by the assessor before the convening of the City Council as a Board of Review that it was to be assessed upon corporation stock (Transcript page 15). The testimony of Jacob J. Beck, who was the deputy assessor, who made the assessment against the plaintiff, in error, is to the effect that the assessment was made upon the shares of the capital stock of the plaintiff in error (Transcript page 18). In addition to this, the plaintiff, in error, failed to make any complaint before the Board of Review as to the form of assessment. Its complaint before the Board of Review is set out on pages 13 and 14 of the Transcript, and only asks for a reduction on account of the government bonds held by it.

Section 1373 of the Code of Iowa, which is heretofore quoted, provides that upon appeal to the District Court from the action of the Board of Review, the Court shall hear and determine anew all questions arising before the board. In other words,

no question not raised before the Board of Review can afterwards be raised in the Courts of the state.

While it is true that cases in equity are triable *de novo* in the Supreme Court of Iowa, and that no assignment of errors is required under that name, yet by Rule 54 of the Supreme Court of Iowa it is provided as follows:

"Brief of appellant shall contain a short and clear statement disclosing; first, the nature of the action; second, what the issues were; third, * * *; fourth, the errors relied upon for a reversal; fifth, * * * No alleged error or point not contained in this statement of points shall be raised afterwards either by reply brief, or any oral or printed argument, or on petition for a rehearing."

The Supreme Court of Iowa has repeatedly held that it would not consider any point not raised in the brief and argument.

In the case of *Sunley vs. Metropolitan Life Insurance Co.*, 105 N. W., 403, the Supreme Court of Iowa said:

"It is a plain requirement of our rules that the errors relied upon shall be specifically pointed out and where this is not done we will not hold the case and search the record through for ourselves to ascertain if any error was committed."

No question was raised before the Supreme Court of Iowa except questions pertaining to the validity of Section 1322 of the Code of Iowa. (Transcript page 20.) The assessment was treated in all respects in the Supreme Court of Iowa as though made properly under the provisions of Section 1322. The same brief and argument was filed in the Supreme Court in this case and in the case of the *Des Moines Savings Bank vs. The City of Des Moines* and the *People's Savings Bank vs. The City of Des Moines,* and in the statement of the case contained in that argument, it is said:

"Stating it broadly, the question presented in each of these cases is whether Section 1322 of the Code, as construed in the cases to which we have referred, contravenes the provisions of the federal statutes and constitution touching the taxation of bonds of the United States. Each case presents the same funda-

mental question; and because of its fundamental character, a detailed statement of the case is unnecessary."

This Court will not consider questions which are not raised in the Court from which the case comes.

As stated in the case of *Hamilton Manufacturing Co. vs. Massachusetts*, 6 Wallace, 632:

"Questions not decided in the state Court because not raised and presented by the complaining party will not be re-examined in this Court on a writ of error sued out under the 25th section of the Judiciary Act. Apart from the question of jurisdiction, it is necessary that it shall appear that the question presented for decision in this Court was raised in the state Court, and that the decision of the state Court was given as required in that section. Clear and necessary intendment that the question was raised and must have been decided as claimed, in order to have induced the judgment, is sufficient, but it is not sufficient to show that such a question might have arisen and been applicable to the case, unless it appears in the record that it did arise and was applied by the state Court in disposing of the controversy."

Even if it be true that the assessment against the bank was made on the assessment roll against monies and credits or corporation stock, the assessment would not be void merely because made in the wrong name. The most that could be said would be that it was voidable, and if the plaintiff was prejudiced, it should have made objections as to the form before the Board of Equalization and before the Supreme Court of Iowa, and having failed to do that, it has waived its right to make any objection to the assessment on that ground.

In the case of *Weston vs. Cass County*, 69 Iowa, 147, nursery stock was assessed as personal property and the Court said:

"The nursery stock was not personal property; it was a part of the realty. The assessor should have made but one estimate of the land and nursery stock. It was error to make separate assessments, but we are unable to see how the plaintiffs were prejudiced by the error. The rate of taxation on real and personal property is the same."

The Court further said: "If there was any object in making the correction, application should have been made to the Board of Equalization."

In the case of the *First National Bank vs. Concord*, 59 N. H., 75, a question analagous to the one under consideration was raised and the Court said:

"A tax assessed against a national bank for money on hand at interest or deposit will not be abated by the Court on appeal because the words 'surplus capital' used in the statute were not employed by the assessor."

It follows then that the question of whether the assessment was made in proper form is not before this Court, and it is to be treated as an assessment made in proper form under Section 1322 of the Code of Iowa.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

In the case of *L. & N. R. R. Co. vs. Kentucky*, 183 U. S., 503, it is stated on page 508 of the opinion:

"This Court must accept the meaning of the state enactments to be found in them by the state Court."

And in the case of *Cleveland Trust Co. vs. Lander*, reported in the 184 U. S., page 111, on page 115 of the opinion it is said:

"What the Constitution of the state of Ohio requires or what the statutes of the state require as to taxation must be left to be decided by the Supreme Court of the state, and whether that Court has decided logically or illogically that a tax authorized by the laws of the United States on the shares of the company satisfies the Constitution of the state as a tax on the corporation, it is not open to our review or objection."

The construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

The case of the *German American Savings Bank of Burlington vs. Council of the City of Burlington*, reported in the 118 Iowa,

at page 84, is the first case in which the Supreme Court of Iowa had occasion to pass upon Section 1322 of the Code. In that case, the City Council of the City of Burlington, acting as a Board of Review, assessed to the plaintiff the shares of stock of the bank after adding thereto the surplus and profits in its hands, and after deducting therefrom the value of the real estate owned by the bank. The bank at that time held government bonds of the face value of $100,000.00, which were held as a part of its capital stock. The bank made the claim before the Board of Review and before the District Court that it was entitled to have these bonds deducted from the amount of its assessment because not taxable. The District Court upheld this contention, and the case was appealed to the Supreme Court of Iowa. The material part of the opinion of the Supreme Court is as follows:

"Section 1322 of the Code provides that 'shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies, and not to the individual stockholders.' The contention of the appellee that the assessment in this case was in fact upon the capital of the bank, instead of an assessment of the shares of stock, is not sustained by the record. On the other hand, it appears clearly to us that the council intended to assess the shares of stock to the bank as provided in the section referred to, and that the assessment was so made in fact. There is a well-defined and well-recognized distinction between the capital of a bank and the shares of its stock. Indeed, we do not understand that this proposition is seriously questioned by the appellee. *First National Bank of Louisville vs. Kentucky*, 9 Wall. 358 (19 L. Ed. 701); *Farrington vs. Tennessee*, 95 U. S., 686 (24 L. Ed. 558). The shares of stock having been assessed to the bank as provided by law, instead of to the stockholders, may the bank deduct from such assessment the United States bonds held by it as a part of its capital, because of their exemption from taxation? The negative of this proposition is well settled by the highest authority. The tax on the shares of stock of a bank is not a tax on its capital. *Van Allen vs. Assessors*, 3 Wall., 573 (18 L. Ed. 229); *Farrington vs. Tennessee, supra; Railroad Co. vs. Morrow*, (Tenn.), 11 S. W. Rep., 348 (2 L. R. A. 853); *Hubbard vs. Board*, 23 Iowa, 130; *Bank vs. Rerick*, 96 Iowa, 238. See also note in *McHenry vs. Downer* (Cal.), 45 L. R. A., 737 (s. c. 47 Pac.

Rep. 779), on the subject generally. The tax in this case, not being on the capital of the bank, but upon the shares of stock held by the individuals, the bank had no right to deduct therefrom its United States bonds. *First National Bank of Louisville vs. Kentucky, supra; Palmer vs. McMahon,* 133 U. S. 666, 10 (Sup. Ct. Rep. 324, 33 L. Ed. 772); *Trust Co. vs. Lander* (Ohio), 56 N. E. Rep. 1036, and *Trust Co. vs. Lander* (22 Sup. Ct. Rep. 394, 46 L. Ed. 456). And it is in this respect that the case at bar is distinguished from *Ottumwa Sav. Bank vs. City of Ottumwa,* 95 Iowa, 176, and *State Exch. Bank of Parkersburg vs. Town of Parkersburg,* 112 Iowa, 104, in both of which cases the question of the taxation of the capital of the bank was alone involved. Whether, under this statute, the capital may be taxed as well as the shares of stock, we do not determine, for no such question is before us, no attempt having been made to tax the capital of the bank. The statute under consideration is simply an enlargement of Chapter 39 of the acts of the 23rd General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act, it was held in *Bank vs. Rerick,* 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that 'as the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends or reserving a surplus, the payment of the tax by the corporation instead of by the individual stockholder, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

This decision followed the rule laid down in *Primghar State Bank vs. Rerick,* 96 Iowa, 238, which case was decided under Section 1 of Chapter 39 of the Acts of the 23d General Assembly, which section provided:

"That all shares of the capital stock of banking associations organized under the general incorporation laws of the state known as state or commercial banks, shall be assessed to such banks in the city or town wherein located, and not to the individual shareholders."

The Supreme Court of Iowa in the above quoted opinion construes Section 1322 of the Iowa Code to mean that it is the shares of stock of savings banks which are to be assessed, and not the capital stock. It recognizes the distinction between the shares of stock and capital stock, and this Court under the rule heretofore suggested must treat this section of the Code of Iowa as authorizing an assessment against shares of stock. The Supreme Court of Iowa further determined that the payment of the taxes assessed against the shares of stock of the bank was in effect a payment by the shareholders, inasmuch as the property of the bank was the property of the shareholders. It was not decided, nor did the Supreme Court of Iowa say, either in this opinion or in the opinion in the case of *Primghar State Bank vs. Rerick*, as claimed by the plaintiff in error, that the tax was, in effect, a tax upon the property owned by the bank as a corporation and that therefore the owner of the property paid the tax. The plaintiff in error, has misconstrued the opinion. What the Supreme Court of Iowa said in the Primghar State Bank case was:

"As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes."

This language was quoted and approved in the case of the *German American Savings Bank vs. Burlington, supra.* The Court further determined that a tax upon shares of stock without deducting, in ascertaining the value thereof, the bank's holdings of government bonds is not a tax upon the bonds.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

A tax on the shares of stock of a bank is not a tax on its capital stock.

It has long been the established rule, not only for the state Courts, but the Federal Courts as well, that, in fixing the value of shares of stock for the purpose of taxation, government bonds owned by the bank need not be deducted. The earliest case on that proposition is the case of *Van Allen vs. Assessors,* 3 Wallace, 584. The Court in that case said:

"The main and important question involved, and the one which has been argued at length and with eminent ability, is whether the state possesses the power to authorize the taxation of the shares of stock of these national banks in the hands of the stockholders, whose capital is wholly invested in stock and bonds of the United States?

"The Court is of the opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of.

"The suggestion is that it is a tax by the state upon the bonds of the government which constitutes the capital of the bank and which this Court has heretofore decided to be illegal. But this suggestion is scarcely well founded. * * * The tax is the condition for the new rights and privileges conferred upon these associations.

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own * * *.

"The interest of the stockholder entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the share holder like any other property that may belong to him. Now, it is this interest

which the act of Congress has left subject to taxation by the states, under the limitations prescribed."

The principle enunciated in the above case has since been reaffirmed by the Supreme Court of the United States and followed by later decisions.

In the case of the *First National Bank vs. Farwell,* 10 Bissell, 270 (U. S. Circuit Court), the Court said:

"This is a bill filed by the plaintiff to restrain by injunction the collection of a tax by the defendant, for the reason, as alleged, that this provision of the statute has been violated by the assessment of the shares of stock of the plaintiff in this case. It is stated in the bill that no allowance was made by the assessors for the amount of capital and surplus invested in government bonds. This is answered, showing that such allowance need not be made by the case of *Van Allen vs. Assessors,* and the case of *People vs. Commissioners,* 4 Wallace, 244."

In *Exchange National Bank vs. Miller,* 19 Fed. Rep., 379, it is said:

"Unless the taxation on the shares in national banks is indirectly a tax on the property of the bank, there is no discrimination in favor of the individual banker and the unincorporated bank. But in *Van Allen vs. Assessors,* 3 Wallace, 573, the Supreme Court of the United States decided that a tax on the shares is not a tax on the capital of the bank. They state as a familiar law that the corporation is the legal owner of all of the property of the bank, real and personal, and that the interest of the shareholders is a distinct independent interest or property, held by the shareholder like any other property that may belong to him, and that it is this interest which the act of Congress has left subject to taxation by the states. Chief Justice Chase, for himself and Associate Justices Wayne and Swayne, in a dissenting opinion, argued with great power that taxation on shares in national banks, without reference to the amount of their capital invested in bonds of the United States, was actual, though indirect, taxation of the bonds, but the holding of the majority of the Court was affirmed in *People vs. Commissioners,* 4 Wall., 244, and has since remained as settled law. So that the dissenting opinion of the Chief Justice only strengthens the authority of *Van Allen vs. Assessors.*"

The plaintiff in error, in its argument would lead one to believe that the Federal statutes authorize the state in case of national

banks to assess government bonds owned by said national banks, and predicates its claim on Section 5219 of the Revised Statutes of the United States. The section just cited provides as follows:

"Nothing shall prevent all the shares of any association from being included in the valuation of personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal taxes to the same extent according to its value as other real property taxed."

The above section does not confer power on the state to tax United States Bonds, but only confers power on the state to tax the shares of stock of such banks. Without this section or statute the state would be without power to tax the shares of stock in national banks. No Federal authority is required to authorize the state to tax the shares of stock of its own banks, such as savings or state banks. Savings banks are creatures of the state, and are subject to all conditions imposed upon them by the state so long as there is no class discrimination, and the state has the power to require the banks to pay the tax on its shares of stock.

As suggested by Mr. Justice McKenna, in the opinion in the case of *Cleveland Trust Co. vs. Lander,* 184 U. S., 111, on page 113:

"The argument of the plaintiff in error claims greater immunity from taxation for the shares of the trust company than Section 5219 of the Revised Statutes of the United States gives to shares in national banks."

It requires but a mere statement of this proposition for it to be denied.

State and savings banks are creatures of the state and are sub-

ject to all of the conditions imposed upon them by the state. It has the power to compel them to contribute towards the support of the state, or the sub-divisions thereof, and has the right to say how the contribution shall be paid. It has the power to say how much taxes it shall pay, and in what manner they shall be paid, whether on the capital stock or shares of stock, or a per cent on its deposits, or in any other manner the legislature may think best. In respect to taxes, its power is absolute, unless prohibited by the Constitution of the United States. If the tax is oppressive or unjust, the legislature has the right to remedy the evil, if one exists, and not the courts. The province of the Court is to interpret the statute and make known the intent of the legislature, and when the highest Court of the state has placed a construction on a statute, the interpretation so given, whether logical or not, is the law, and if the effect of such construction works a hardship or burden on the corporation, it must appeal to the legislature for relief.

In the Delaware Railroad Tax case, reported in the 18 Wallace, page 206, 231, the Court said:

"The state may impose taxes upon the corporation as an entity existing under its laws as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than are prescribed by the legislature of the state."

In the case of *Society for Savings vs. Coite,* 6 Wallace, 594. the plaintiff was required to pay a certain tax on its deposits and a certain portion of its deposits were invested in United States bonds, and for that reason they attempted to have the amount of deposits invested in government bonds deducted from the amount on which the tax was to be assessed, on the ground that government bonds were exempt from taxation, but the Court held that it was a franchise tax and that the Society was not exempt

from taxation to the extent of the deposits invested in government bonds.

It rests with the legislature of Iowa to say what conditions shall be imposed upon the right of a savings bank to do business in Iowa, and if it chooses to require as one of those conditions that it pay the taxes assessed against its shares of stock, it has the right to so do, and the Courts will not interfere with the exercise of that right.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

A state law which requires a bank to pay the tax which is rightfully laid on the shares is valid. In the case of the *National Bank vs. Commonwealth,* reported in 9 Wallace, 353, the Court said:

"It is strongly urged that it is to be deemed a tax on the capital of the bank because the law required the officers of the bank to pay this tax on the shares of its stockholders. Whether the state has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a tax on these shares. It has been the practice of many of the states for a long time to reqiure of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only, mode of doing this in all the New England states, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the state of the bank and paid over to the local municipal authorities. * * * If the state cannot require of the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject."

The Court further states: "It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional. We do not see the remotest probability in their being required to pay the tax which their stockholders owe to the state for the shares of their capital stock, when the law of the Federal government authorized the tax."

As was stated by the Supreme Court of Iowa in the case of the *German American Savings Bank vs. Burlington, supra:*

"The statute under consideration is simply an enlargement of Chapter 39 of the Act of the 23d General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act it was held in *Bank vs. Rerick,* 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that, 'As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends, and reserving a surplus, the payment of the tax by the corporation, instead of by the individual stockholders, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

It is the latter part of this expression of the Supreme Court of Iowa that the plaintiff in error has construed into a statement that the bank owned the property which was assessed under Section 1322 of the Code, but a reading of the whole opinion shows that what the Supreme Court of Iowa intended was that the owners of the shares of stock in effect paid the taxes. As a general proposition, a state may provide for the assessment of savings bank capital as well as other property in such mode as it may deem most convenient and effective for the collection of its revenue.

The statute is not void because it does not provide for personal notice to the shareholders.

The plaintiff in error attacks the validity of the statute in question (Section 1322 of the Code), and contends that there is a lack of due process of law in that it does not provide for personal notice to the stockholders of the proceedings by which the assessment of their shares is to be made. This question was raised and

determined in the case of *Nevada National Bank vs. Dodge, Assessor,* reported in the 119 Federal Reporter, 57. In that case the law did not require any notice to be given to the shareholders, but the statute authorizing the assessment was held valid. The statute in that case provided as follows:

"The assessor charged by law with the assessment of said shares shall within ten days after he has made such assessment give written notice to each national banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act."

The Court, in rendering the opinion, stated as follows:

"We are unable to assent to the proposition that the notice thus provided for is insufficient, when considered in connection with other sections of the Code of the state, which provide for a Board of Equalization, with power to hear complaints respecting the justice of any assessment, and also prescribe the time and place when and where such complaint may be heard. The shares of national banking associations are assessed under a general law, of which the stockholders must take notice; and the time and place when and where a stockholder may appear for the purpose of applying for a reduction of the valuation placed upon his property is fixed by general law, of which he must also take notice. This we think, under all the authorities, sufficient notice of the proceedings for the assessment and taxation of property."

In the case of *Palmer vs. McMahon,* reported in the 133 U. S., 662, the Court said:

"The power to tax belongs exclusively to the legislative branch of the government; and when the law provides for a mode of confirming or contesting the charge imposed with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law."

In the case of *Merchants' & Manfg. National Bank vs. Commonwealth,* reported in the 17 Supreme Court Rep., 829, Justice Gray said:

"A final objection is that there is a lack of due process of law in that the property of the stockholders is subject to an *ad valorem* tax without an opportunity being given to them to be heard as

to the value. It is true the statute contemplates no personal notice to the shareholders, but that has never been considered essential to due process of law in respect to taxation."

The Court further said: "And a notice to all property holders of the time and place at which the assessment is to be made is all that 'due process' requires in respect to the matter of notice in the proceedings."

In the case of *Santa Clara Co. vs. Southern Pac. R. Co.*, reported in the 8 U. S., Circuit Court of Appeals, 401, the Court said:

"The great preponderance of authority is to the effect that if a statute, of which all persons are bound to take notice, specifies the day and place when the Board of Equalization shall meet, a person affected by its action cannot complain that such action was without notice to him. And on the same principle, a published general notice of the meeting of the Board of Equalization is sufficient to give authority to act upon individuals."

Section 1370 of the Code of Iowa provides that the City Council shall constitute a local Board of Review for the city, and provides that the board shall meet on the first Monday in April at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, and shall adjust assessments for the city.

Section 1373 of the Code of Iowa provides that any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, and further provides for appeals from the action of the Board of Review upon such written complaints. It surely cannot be contended that under the statutes of Iowa a person has not ample opportunity to complain of any assessment which in any manner affects him and to have the assessment reviewed.

It is also claimed by the plaintiff in error that shareholders in savings banks are denied equal protection of the laws, inasmuch as they are not allowed to deduct their debts from the valuation of their shares of stock, while shareholders in national banks are. The right of deduction is a statutory, and not a Constitutional,

right. In reference to this question, the Supheme Court of Iowa, in the case of *Primghar State Bank vs. Rerick*, 96 Iowa, 238, says:

"If it be true that shareholders of the capital stock of banks which fall within the provisions of the act under consideration cannot deduct their debts from the amount of their stock for the purposes of taxation, is the act valid? We are of the opinion that it is. The fact that national banks and banks organized under the general incorporation laws of this state transact similar kinds of business does not show that they must be taxed according to the same plan. National banks are organized and exist by virtue of Acts of Congress. They are instruments of the general government, designed to aid in the administration of a branch of the public service. The states cannot exercise control over them, excepting with the consent of Congress, expressed or implied, and the power of the states to tax them is derived from that source. *Bank vs. Dearing*, 91 U. S., 29; *First National Bank of Albia vs. City Council of Albia, supra.* They are subject to regulations and limitations of power which have no application to state banks, and constitute a class of corporations which may be properly subjected to a plan of taxation different from that applied to state banks. The latter constitute another class, with distinct powers and privileges, and subject to different restrictions, and may properly be subject to a plan of taxation applicable only to that and similar classes."

No one has any right to deduct from the amount for which he is assessed the amount of his debts, except by virtue of a statute, and the Constitution is satisfied if deductions are allowed alike to all persons who fall within the same class.

W. H. BREMNER,
M. H. COHEN,
Attorneys for Defendants in Error.

Brief and Argument of Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 92.

DES MOINES SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

W. H. BREMNER AND M. H. COHEN,
Attorneys for Defendants in Error.

Service of the within Brief and Argument is hereby accepted and acknowledged this.....day of.....1906.

.....

.....

Attorneys for Plaintiff in Error.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

Statement.

The plaintiff in error is a corporation organized and existing under the laws of the State of Iowa, pertaining to savings banks. In the year 1902, the Assessor of the City of Des Moines made an assessment for taxation against the shares of stock of said bank, in accordance with the provisions of Section 1322 of the Code of Iowa. The plaintiff, in error, was the owner of government bonds of the United States to the amount of $32,675.00 and in determining the value of its shares of stock for taxation no deduction was made on account of said bonds. The plaintiff, in error, thereupon appeared before the City Council of the City of Des Moines, Iowa, sitting as a Board of Review in accordance with the provisions of the laws of Iowa, and filed a written complaint (Transcript, page 19), asking that the amount of its capital invested in government bonds be deducted in determining the valuation of the property to be assessed to it. The Board of Review refused to make the deduction and thereafter the plaintiff in error, appealed to the District Court of Iowa, in and for Polk County, complaining of the action of the Board of Review. Thereafter the said District Court dismissed said appeal (Transcript page 19). Thereafter and on the 21st day of March, 1904, the plaintiff, in error, duly appealed to the Supreme Court of Iowa, where the assessment was again sustained. (Transcript page 21.) To reverse this judgment of the Supreme Court of Iowa, the writ of error has been sued out in this case.

This case involves the validity of Section 1322 of the Code of 1897 of Iowa, which is as follows:

"Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. Shares of stock of state and savings banks and loan and trust com-

panies shall be assessed to such banks and loan and trust companies and not to the individual stockholders. At the time the assessment is made, the officer of the national banks shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed."

PROPOSITIONS INVOLVED.

I.

The form of the assessment.

The assessment is not void merely because it was assessed in the wrong name.

Weston & Co. vs. Cass Co., 69 Iowa, 147;
First National Bank vs. Concord, 59 N. H., 75.

The decision of the Supreme Court of Iowa as to the form of the assessment and failure to comply with the state statute in relation to the method of procedure is binding on the Supreme Court of the United States.

Stanley vs. Supervisors of Albany, 121 U. S., 535;
Palmer vs. McMahon, 133 U. S., 662.

Questions not raised in the lower court will not be considered on appeal.

Sunley vs. Metropolitan Life Ins. Co., 105 N. W., 408 (Iowa);
McCormick Harvester Co. vs. McCormick, 103 N. W., 204 (Iowa);
Stelpflug vs. Wolfe, 102 N. W., 1130 (Iowa);
Hamilton Mfg. Co. vs. Mass., 6 Wall., 632.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
L. & N. R. R. vs. Ky., 183 U. S., 503-507.

Construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

German Am. Sav. Bank vs. Burlington, 118 Iowa, 84;
National State Bank vs. Burlington, 119 Iowa, 696;
First National Bank vs. Independence, 123 Iowa, 482.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

Van Allen vs. Assessors, 3 Wallace, 584;
First National Bank vs. Farwell, 10 Bissell, 270;
People vs. Commissioners, 4 Wallace, 244;
National Bank vs. Miller, 19 Federal R., 378.
National Bank vs. Commonwealth, 9 Wallace, 353;
Cleveland Trust Co. vs. Lander, 184 U. S., 111.

A tax on the shares of stock of a bank is not a tax on its capital stock.

Van Allen vs. Assessors, 3 Wallace, 573;
Palmer vs. McMahon, 135 U. S., 662;

Cleveland Trust Co. vs. Lander, 184 U. S., 111;
German Am. Savings Bank vs. Burlington, 118 Iowa, 84;
First National Bank vs. Independence, 123 Iowa, 482.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

Primghar State Bank vs. Rerick, 96 Iowa, 238;
German Am. Savings Bank vs. Burlington, supra;
National Bank vs. Commonwealth, 9 Wallace, 353;
First National Bank vs. Douglas Co., 3 Dillon, 330;
Lionberger vs. Rouse, 9 Wallace, 470.

The statute is not void because it does not provide for personal notice to the shareholders.

National Bank vs. Dodge, Assessor, 119 Fed., 57;
Palmer vs. McMahon, 133 U. S., 662;
Merchants' and Mfg. Nat'l. Bank vs. Commonwealth, 17 S. C. R., 829;
St. Clara Co. vs. Southern Pac. R. Co., 8 U. S., Circuit Court of Appeals, 401.

Section 1370 of the Code of Iowa prescribes: "That the city or town council shall constitute the Board of Review for such city or town. The Board shall meet on the first Monday of April at the office of the city or town clerk and sit from day to day until its duties are completed, and shall adjust assessments for the city or town."

Section 1373 of the Code of Iowa provides: "Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction * * * and appeals may be taken from the action of the board with reference to such complaint to the District Court of the county in which said board holds its sessions. * * * The Court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, * * *"

ARGUMENT.

I.

The form of the assessment made.

The plaintiff, in error, attacks the form of the assessment, claiming the assessment as actually made was upon monies and credits and not upon shares of stock, as required by Section 1322. The Supreme Court of Iowa, however, has determined that the assessment was properly made under the provisions of Section 1322 of the Code, and its decision upon this point is binding upon this Court. As was stated by Mr. Chief Justice Fuller in the case of *Palmer vs. McMahon,* 133 U. S., page 662, on page 665 of the opinion:

"We are bound by the decision of the Court of Appeals of the state of New York adversely to the plaintiff, in error, as to failure to comply with the state statute in relation to the method of procedure, form of assessment, oath of assessors, etc."

Furthermore, the plaintiff, in error, was notified by the assessor before the convening of the City Council as a Board of Review that it was to be assessed upon corporation stock (Transcript page 15). The testimony of Jacob J. Beck, who was the deputy assessor, who made the assessment against the plaintiff, in error, is to the effect that the assessment was made upon the shares of the capital stock of the plaintiff in error (Transcript page 18). In addition to this, the plaintiff, in error, failed to make any complaint before the Board of Review as to the form of assessment. Its complaint before the Board of Review is set out on pages 13 and 14 of the Transcript, and only asks for a reduction on account of the government bonds held by it.

Section 1373 of the Code of Iowa, which is heretofore quoted, provides that upon appeal to the District Court from the action of the Board of Review, the Court shall hear and determine anew all questions arising before the board. In other words,

no question not raised before the Board of Review can afterwards be raised in the Courts of the state.

While it is true that cases in equity are triable *de novo* in the Supreme Court of Iowa, and that no assignment of errors is required under that name, yet by Rule 54 of the Supreme Court of Iowa it is provided as follows:

"Brief of appellant shall contain a short and clear statement disclosing; first, the nature of the action; second, what the issues were; third, * * *; fourth, the errors relied upon for a reversal; fifth, * * * No alleged error or point not contained in this statement of points shall be raised afterwards either by reply brief, or any oral or printed argument, or on petition for a rehearing."

The Supreme Court of Iowa has repeatedly held that it would not consider any point not raised in the brief and argument.

In the case of *Sunley vs. Metropolitan Life Insurance Co.*, 105 N. W., 403, the Supreme Court of Iowa said:

"It is a plain requirement of our rules that the errors relied upon shall be specifically pointed out and where this is not done we will not hold the case and search the record through for ourselves to ascertain if any error was committed."

No question was raised before the Supreme Court of Iowa except questions pertaining to the validity of Section 1322 of the Code of Iowa. (Transcript page 20.) The assessment was treated in all respects in the Supreme Court of Iowa as though made properly under the provisions of Section 1322. The same brief and argument was filed in the Supreme Court in this case and in the case of the *Des Moines Savings Bank vs. The City of Des Moines* and the *People's Savings Bank vs. The City of Des Moines,* and in the statement of the case contained in that argument, it is said:

"Stating it broadly, the question presented in each of these cases is whether Section 1322 of the Code, as construed in the cases to which we have referred, contravenes the provisions of the federal statutes and constitution touching the taxation of bonds of the United States. Each case presents the same funda-

mental question; and because of its fundamental character, a detailed statement of the case is unnecessary."

This Court will not consider questions which are not raised in the Court from which the case comes.

As stated in the case of *Hamilton Manufacturing Co. vs. Massachusetts*, 6 Wallace, 632:

"Questions not decided in the state Court because not raised and presented by the complaining party will not be re-examined in this Court on a writ of error sued out under the 25th section of the Judiciary Act. Apart from the question of jurisdiction, it is necessary that it shall appear that the question presented for decision in this Court was raised in the state Court, and that the decision of the state Court was given as required in that section. Clear and necessary intendment that the question was raised and must have been decided as claimed, in order to have induced the judgment, is sufficient, but it is not sufficient to show that such a question might have arisen and been applicable to the case, unless it appears in the record that it did arise and was applied by the state Court in disposing of the controversy."

Even if it be true that the assessment against the bank was made on the assessment roll against monies and credits or corporation stock, the assessment would not be void merely because made in the wrong name. The most that could be said would be that it was voidable, and if the plaintiff was prejudiced, it should have made objections as to the form before the Board of Equalization and before the Supreme Court of Iowa, and having failed to do that, it has waived its right to make any objection to the assessment on that ground.

In the case of *Weston vs. Cass County*, 69 Iowa, 147, nursery stock was assessed as personal property and the Court said:

"The nursery stock was not personal property; it was a part of the realty. The assessor should have made but one estimate of the land and nursery stock. It was error to make separate assessments, but we are unable to see how the plaintiffs were prejudiced by the error. The rate of taxation on real and personal property is the same."

The Court further said: "If there was any object in making the correction, application should have been made to the Board of Equalization."

In the case of the *First National Bank vs. Concord*, 59 N. H., 75, a question analagous to the one under consideration was raised and the Court said:

"A tax assessed against a national bank for money on hand at interest or deposit will not be abated by the Court on appeal because the words 'surplus capital' used in the statute were not employed by the assessor."

It follows then that the question of whether the assessment was made in proper form is not before this Court, and it is to be treated as an assessment made in proper form under Section 1322 of the Code of Iowa.

II.

Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

In the case of *L. & N. R. R. Co. vs. Kentucky*, 183 U. S., 503, it is stated on page 508 of the opinion:

"This Court must accept the meaning of the state enactments to be found in them by the state Court."

And in the case of *Cleveland Trust Co. vs. Lander*, reported in the 184 U. S., page 111, on page 115 of the opinion it is said:

"What the Constitution of the state of Ohio requires or what the statutes of the state require as to taxation must be left to be decided by the Supreme Court of the state, and whether that Court has decided logically or illogically that a tax authorized by the laws of the United States on the shares of the company satisfies the Constitution of the state as a tax on the corporation, it is not open to our review or objection."

The construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

The case of the *German American Savings Bank of Burlington vs. Council of the City of Burlington*, reported in the 118 Iowa,

at page 84, is the first case in which the Supreme Court of Iowa had occasion to pass upon Section 1322 of the Code. In that case, the City Council of the City of Burlington, acting as a Board of Review, assessed to the plaintiff the shares of stock of the bank after adding thereto the surplus and profits in its hands, and after deducting therefrom the value of the real estate owned by the bank. The bank at that time held government bonds of the face value of $100,000.00, which were held as a part of its capital stock. The bank made the claim before the Board of Review and before the District Court that it was entitled to have these bonds deducted from the amount of its assessment because not taxable. The District Court upheld this contention, and the case was appealed to the Supreme Court of Iowa. The material part of the opinion of the Supreme Court is as follows:

"Section 1322 of the Code provides that 'shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies, and not to the individual stockholders.' The contention of the appellee that the assessment in this case was in fact upon the capital of the bank, instead of an assessment of the shares of stock, is not sustained by the record. On the other hand, it appears clearly to us that the council intended to assess the shares of stock to the bank as provided in the section referred to, and that the assessment was so made in fact. There is a well-defined and well-recognized distinction between the capital of a bank and the shares of its stock. Indeed, we do not understand that this proposition is seriously questioned by the appellee. *First National Bank of Louisville vs. Kentucky*, 9 Wall. 358 (19 L. Ed. 701); *Farrington vs. Tennessee*, 95 U. S., 686 (24 L. Ed. 558). The shares of stock having been assessed to the bank as provided by law, instead of to the stockholders, may the bank deduct from such assessment the United States bonds held by it as a part of its capital, because of their exemption from taxation? The negative of this proposition is well settled by the highest authority. The tax on the shares of stock of a bank is not a tax on its capital. *Van Allen vs. Assessors*, 3 Wall., 573 (18 L. Ed. 229); *Farrington vs. Tennessee, supra; Railroad Co. vs. Morrow*, (Tenn.), 11 S. W. Rep., 348 (2 L. R. A. 853); *Hubbard vs. Board*, 23 Iowa, 130; *Bank vs. Rerick*, 96 Iowa, 238. See also note in *McHenry vs. Downer* (Cal.), 45 L. R. A., 737 (s. c. 47 Pac.

Rep. 779), on the subject generally. The tax in this case, not being on the capital of the bank, but upon the shares of stock held by the individuals, the bank had no right to deduct therefrom its United States bonds. *First National Bank of Louisville vs. Kentucky, supra; Palmer vs. McMahon,* 133 U. S. 666, 10 (Sup. Ct. Rep. 324, 33 L. Ed. 772); *Trust Co. vs. Lander* (Ohio), 56 N. E. Rep. 1036, and *Trust Co. vs. Lander* (22 Sup. Ct. Rep. 394, 46 L. Ed. 456). And it is in this respect that the case at bar is distinguished from *Ottumwa Sav. Bank vs. City of Ottumwa,* 95 Iowa, 176, and *State Exch. Bank of Parkersburg vs. Town of Parkersburg,* 112 Iowa, 104, in both of which cases the question of the taxation of the capital of the bank was alone involved. Whether, under this statute, the capital may be taxed as well as the shares of stock, we do not determine, for no such question is before us, no attempt having been made to tax the capital of the bank. The statute under consideration is simply an enlargement of Chapter 39 of the acts of the 23rd General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act, it was held in *Bank vs. Rerick,* 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that 'as the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends or reserving a surplus, the payment of the tax by the corporation instead of by the individual stockholder, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

This decision followed the rule laid down in *Primghar State Bank vs. Rerick,* 96 Iowa, 238, which case was decided under Section 1 of Chapter 39 of the Acts of the 23d General Assembly, which section provided:

"That all shares of the capital stock of banking associations organized under the general incorporation laws of the state known as state or commercial banks, shall be assessed to such banks in the city or town wherein located, and not to the individual shareholders."

The Supreme Court of Iowa in the above quoted opinion construes Section 1322 of the Iowa Code to mean that it is the shares of stock of savings banks which are to be assessed, and not the capital stock. It recognizes the distinction between the shares of stock and capital stock, and this Court under the rule heretofore suggested must treat this section of the Code of Iowa as authorizing an assessment against shares of stock. The Supreme Court of Iowa further determined that the payment of the taxes assessed against the shares of stock of the bank was in effect a payment by the shareholders, inasmuch as the property of the bank was the property of the shareholders. It was not decided, nor did the Supreme Court of Iowa say, either in this opinion or in the opinion in the case of *Primghar State Bank vs. Rerick,* as claimed by the plaintiff in error, that the tax was, in effect, a tax upon the property owned by the bank as a corporation and that therefore the owner of the property paid the tax. The plaintiff in error, has misconstrued the opinion. What the Supreme Court of Iowa said in the Primghar State Bank case was:

"As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes."

This language was quoted and approved in the case of the *German American Savings Bank vs. Burlington, supra.* The Court further determined that a tax upon shares of stock without deducting, in ascertaining the value thereof, the bank's holdings of government bonds is not a tax upon the bonds.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

A tax on the shares of stock of a bank is not a tax on its capital stock.

It has long been the established rule, not only for the state Courts, but the Federal Courts as well, that, in fixing the value of shares of stock for the purpose of taxation, government bonds owned by the bank need not be deducted. The earliest case on that proposition is the case of *Van Allen vs. Assessors,* 3 Wallace, 584. The Court in that case said:

"The main and important question involved, and the one which has been argued at length and with eminent ability, is whether the state possesses the power to authorize the taxation of the shares of stock of these national banks in the hands of the stockholders, whose capital is wholly invested in stock and bonds of the United States?

"The Court is of the opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of.

"The suggestion is that it is a tax by the state upon the bonds of the government which constitutes the capital of the bank and which this Court has heretofore decided to be illegal. But this suggestion is scarcely well founded. * * * The tax is the condition for the new rights and privileges conferred upon these associations.

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own * * *.

"The interest of the stockholder entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the share holder like any other property that may belong to him. Now, it is this interest

which the act of Congress has left subject to taxation by the states, under the limitations prescribed."

The principle enunciated in the above case has since been reaffirmed by the Supreme Court of the United States and followed by later decisions.

In the case of the *First National Bank vs. Farwell,* 10 Bissell, 270 (U. S. Circuit Court), the Court said:

"This is a bill filed by the plaintiff to restrain by injunction the collection of a tax by the defendant, for the reason, as alleged, that this provision of the statute has been violated by the assessment of the shares of stock of the plaintiff in this case. It is stated in the bill that no allowance was made by the assessors for the amount of capital and surplus invested in government bonds. This is answered, showing that such allowance need not be made by the case of *Van Allen vs. Assessors,* and the case of *People vs. Commissioners,* 4 Wallace, 244."

In *Exchange National Bank vs. Miller,* 19 Fed. Rep., 379, it is said:

"Unless the taxation on the shares in national banks is indirectly a tax on the property of the bank, there is no discrimination in favor of the individual banker and the unincorporated bank. But in *Van Allen vs. Assessors,* 3 Wallace, 573, the Supreme Court of the United States decided that a tax on the shares is not a tax on the capital of the bank. They state as a familiar law that the corporation is the legal owner of all of the property of the bank, real and personal, and that the interest of the shareholders is a distinct independent interest or property, held by the shareholder like any other property that may belong to him, and that it is this interest which the act of Congress has left subject to taxation by the states. Chief Justice Chase, for himself and Associate Justices Wayne and Swayne, in a dissenting opinion, argued with great power that taxation on shares in national banks, without reference to the amount of their capital invested in bonds of the United States, was actual, though indirect, taxation of the bonds, but the holding of the majority of the Court was affirmed in *People vs. Commissioners,* 4 Wall., 244, and has since remained as settled law. So that the dissenting opinion of the Chief Justice only strengthens the authority of *Van Allen vs. Assessors.*"

The plaintiff in error, in its argument would lead one to believe that the Federal statutes authorize the state in case of national

banks to assess government bonds owned by said national banks, and predicates its claim on Section 5219 of the Revised Statutes of the United States. The section just cited provides as follows:

"Nothing shall prevent all the shares of any association from being included in the valuation of personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal taxes to the same extent according to its value as other real property taxed."

The above section does not confer power on the state to tax United States Bonds, but only confers power on the state to tax the shares of stock of such banks. Without this section or statute the state would be without power to tax the shares of stock in national banks. No Federal authority is required to authorize the state to tax the shares of stock of its own banks, such as savings or state banks. Savings banks are creatures of the state, and are subject to all conditions imposed upon them by the state so long as there is no class discrimination, and the state has the power to require the banks to pay the tax on its shares of stock.

As suggested by Mr. Justice McKenna, in the opinion in the case of *Cleveland Trust Co. vs. Lander,* 184 U. S., 111, on page 113:

"The argument of the plaintiff in error claims greater immunity from taxation for the shares of the trust company than Section 5219 of the Revised Statutes of the United States gives to shares in national banks."

It requires but a mere statement of this proposition for it to be denied.

State and savings banks are creatures of the state and are sub-

ject to all of the conditions imposed upon them by the state. It has the power to compel them to contribute towards the support of the state, or the sub-divisions thereof, and has the right to say how the contribution shall be paid. It has the power to say how much taxes it shall pay, and in what manner they shall be paid, whether on the capital stock or shares of stock, or a per cent on its deposits, or in any other manner the legislature may think best. In respect to taxes, its power is absolute, unless prohibited by the Constitution of the United States. If the tax is oppressive or unjust, the legislature has the right to remedy the evil, if one exists, and not the courts. The province of the Court is to interpret the statute and make known the intent of the legislature, and when the highest Court of the state has placed a construction on a statute, the interpretation so given, whether logical or not, is the law, and if the effect of such construction works a hardship or burden on the corporation, it must appeal to the legislature for relief.

In the Delaware Railroad Tax case, reported in the 18 Wallace, page 206, 231, the Court said:

"The state may impose taxes upon the corporation as an entity existing under its laws as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than are prescribed by the legislature of the state."

In the case of *Society for Savings vs. Coite,* 6 Wallace, 594. the plaintiff was required to pay a certain tax on its deposits and a certain portion of its deposits were invested in United States bonds, and for that reason they attempted to have the amount of deposits invested in government bonds deducted from the amount on which the tax was to be assessed, on the ground that government bonds were exempt from taxation, but the Court held that it was a franchise tax and that the Society was not exempt

from taxation to the extent of the deposits invested in government bonds.

It rests with the legislature of Iowa to say what conditions shall be imposed upon the right of a savings bank to do business in Iowa, and if it chooses to require as one of those conditions that it pay the taxes assessed against its shares of stock, it has the right to so do, and the Courts will not interfere with the exercise of that right.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

A state law which requires a bank to pay the tax which is rightfully laid on the shares is valid. In the case of the *National Bank vs. Commonwealth,* reported in 9 Wallace, 353, the Court said:

"It is strongly urged that it is to be deemed a tax on the capital of the bank because the law required the officers of the bank to pay this tax on the shares of its stockholders. Whether the state has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a tax on these shares. It has been the practice of many of the states for a long time to reqiure of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only, mode of doing this in all the New England states, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the state of the bank and paid over to the local municipal authorities. * * * If the state cannot require of the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject."

The Court further states: "It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional. We do not see the remotest probability in their being required to pay the tax which their stockholders owe to the state for the shares of their capital stock, when the law of the Federal government authorized the tax."

As was stated by the Supreme Court of Iowa in the case of the *German American Savings Bank vs. Burlington, supra:*

"The statute under consideration is simply an enlargement of Chapter 39 of the Act of the 23d General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act it was held in *Bank vs. Rerick*, 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that, 'As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends, and reserving a surplus, the payment of the tax by the corporation, instead of by the individual stockholders, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

It is the latter part of this expression of the Supreme Court of Iowa that the plaintiff in error has construed into a statement that the bank owned the property which was assessed under Section 1322 of the Code, but a reading of the whole opinion shows that what the Supreme Court of Iowa intended was that the owners of the shares of stock in effect paid the taxes. As a general proposition, a state may provide for the assessment of savings bank capital as well as other property in such mode as it may deem most convenient and effective for the collection of its revenue.

The statute is not void because it does not provide for personal notice to the shareholders.

The plaintiff in error attacks the validity of the statute in question (Section 1322 of the Code), and contends that there is a lack of due process of law in that it does not provide for personal notice to the stockholders of the proceedings by which the assessment of their shares is to be made. This question was raised and

determined in the case of *Nevada National Bank vs. Dodge, Assessor,* reported in the 119 Federal Reporter, 57. In that case the law did not require any notice to be given to the shareholders, but the statute authorizing the assessment was held valid. The statute in that case provided as follows:

"The assessor charged by law with the assessment of said shares shall within ten days after he has made such assessment give written notice to each national banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act."

The Court, in rendering the opinion, stated as follows:

"We are unable to assent to the proposition that the notice thus provided for is insufficient, when considered in connection with other sections of the Code of the state, which provide for a Board of Equalization, with power to hear complaints respecting the justice of any assessment, and also prescribe the time and place when and where such complaint may be heard. The shares of national banking associations are assessed under a general law, of which the stockholders must take notice; and the time and place when and where a stockholder may appear for the purpose of applying for a reduction of the valuation placed upon his property is fixed by general law, of which he must also take notice. This we think, under all the authorities, sufficient notice of the proceedings for the assessment and taxation of property."

In the case of *Palmer vs. McMahon,* reported in the 133 U. S., 662, the Court said:

"The power to tax belongs exclusively to the legislative branch of the government; and when the law provides for a mode of confirming or contesting the charge imposed with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law."

In the case of *Merchants' & Manfg. National Bank vs. Commonwealth,* reported in the 17 Supreme Court Rep., 829, Justice Gray said:

"A final objection is that there is a lack of due process of law in that the property of the stockholders is subject to an *ad valorem* tax without an opportunity being given to them to be heard as

to the value. It is true the statute contemplates no personal notice to the shareholders, but that has never been considered essential to due process of law in respect to taxation."

The Court further said: "And a notice to all property holders of the time and place at which the assessment is to be made is all that 'due process' requires in respect to the matter of notice in the proceedings."

In the case of *Santa Clara Co. vs. Southern Pac. R. Co.*, reported in the 8 U. S., Circuit Court of Appeals, 401, the Court said:

"The great preponderance of authority is to the effect that if a statute, of which all persons are bound to take notice, specifies the day and place when the Board of Equalization shall meet, a person affected by its action cannot complain that such action was without notice to him. And on the same principle, a published general notice of the meeting of the Board of Equalization is sufficient to give authority to act upon individuals."

Section 1370 of the Code of Iowa provides that the City Council shall constitute a local Board of Review for the city, and provides that the board shall meet on the first Monday in April at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, and shall adjust assessments for the city.

Section 1373 of the Code of Iowa provides that any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, and further provides for appeals from the action of the Board of Review upon such written complaints. It surely cannot be contended that under the statutes of Iowa a person has not ample opportunity to complain of any assessment which in any manner affects him and to have the assessment reviewed.

It is also claimed by the plaintiff in error that shareholders in savings banks are denied equal protection of the laws, inasmuch as they are not allowed to deduct their debts from the valuation of their shares of stock, while shareholders in national banks are. The right of deduction is a statutory, and not a Constitutional,

right. In reference to this question, the Supheme Court of Iowa, in the case of *Primghar State Bank vs. Rerick*, 96 Iowa, 238, says:

"If it be true that shareholders of the capital stock of banks which fall within the provisions of the act under consideration cannot deduct their debts from the amount of their stock for the purposes of taxation, is the act valid? We are of the opinion that it is. The fact that national banks and banks organized under the general incorporation laws of this state transact similar kinds of business does not show that they must be taxed according to the same plan. National banks are organized and exist by virtue of Acts of Congress. They are instruments of the general government, designed to aid in the administration of a branch of the public service. The states cannot exercise control over them, excepting with the consent of Congress, expressed or implied, and the power of the states to tax them is derived from that source. *Bank vs. Dearing*, 91 U. S., 29; *First National Bank of Albia vs. City Council of Albia, supra.* They are subject to regulations and limitations of power which have no application to state banks, and constitute a class of corporations which may be properly subjected to a plan of taxation different from that applied to state banks. The latter constitute another class, with distinct powers and privileges, and subject to different restrictions, and may properly be subject to a plan of taxation applicable only to that and similar classes."

No one has any right to deduct from the amount for which he is assessed the amount of his debts, except by virtue of a statute, and the Constitution is satisfied if deductions are allowed alike to all persons who fall within the same class.

W. H. BREMNER,
M. H. COHEN,
Attorneys for Defendants in Error.

Additional Argument of Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

JANUARY TERM, 1907.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

HOME SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

W. H. Bremner and M. H. Cohen,
Attorneys for Defendants in Error.

ADDITIONAL ARGUMENT OF DEFENDANTS IN ERROR.

I.

The tax to be levied upon the stock of savings banks under the provisions of Section 1322 of the Code of Iowa is a tax upon the shares of stock and not upon the capital of the bank.

Section 1322 of the Code of Iowa provides in terms that the "*shares of stock* of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies and not to the individual stockholders." The statute, therefore, in terms provides that the payment is upon the shares of stock and not upon the capital of the bank. This is the meaning which the Supreme Court of Iowa has given to this section in the cases at bar, and in the previous decisions of that Court. The proposition that this interpretation is binding upon this Court has been fully argued in the Brief and Argument of the Defendants in Error filed previous to the first submission of these cases.

An assessment upon shares of stock of a corporation is an entirely different thing from an assessment upon the capital of the corporation. In many decisions of this Court this proposition has been asserted, and it would serve no useful purpose to review those decisions. The total value of the shares of stock of a corporation may exceed or it may be less than the total assets of the corporation. Section 1305 of the Code of Iowa as amended by Chapter 30 of the Acts of the Twenty-seventh General Assembly, provides that "All property subject to taxation shall be valued at its actual value which shall be entered opposite each item and shall be assessed at 25 per cent of such actual value. * * * Actual value of property as used in this chapter shall mean its value in the

market in the ordinary course of trade." It is a matter of common knowledge that the actual value of a share of stock in the market sometimes varies to a very considerable extent in the course of a very short period of time, although the assets of the corporation may remain substantially the same. It is this market value of the shares of stock of savings banks which is to be taken as the actual value thereof for assessment under the provisions of Section 1322 of the Iowa Code. This section provides that in determining the value of these shares of stock, the Assessor shall consider statements to be furnished by the corporation and "other information he can obtain." Such other information could only consist of the selling or market value of the stock. It is especially true in the case of banking corporations that the total value of its shares of stock may exceed the total assets of the corporation, for the reason that the earning capacity of bank stock depends to a great extent upon the amount of deposits which the bank is able to secure, and if the amount of deposits is large in proportion to the amount of stock, the earning capacity of the stock is much greater than the earning capacity of stock in a similar corporation with the same amount of capital stock, but with small deposits. We submit that the assessment provided for in Section 1322 of the Code of Iowa is upon the shares of stock of the corporation, the value thereof to be the market value, and that in fixing such value, it is not necessary to deduct the holdings of the bank of United States bonds.

II.

Section 1322 of the Code of Iowa is not within the inhibition of the 14th Amendment to the Constitution of the United States.

It is claimed on behalf of the plaintiffs in error that if the statute requires the bank to pay a tax upon the property of the shareholders without provision for its reimbursement,

the bank is deprived of its property without due process of law, and therefore the law is void. It is to be remembered that the plaintiffs in error are Iowa corporations and that the right of the state to regulate such corporations and to provide the terms upon which they may transact business, rests in the sound discretion of the Legislature of Iowa, subject to such restrictions as may be found in the Constitution of the United States, and the Constitution of the State of Iowa. If there is any restriction at all upon the power of the state to regulate its own corporations in addition to the above, it is that the regulations must not be unreasonable. As was stated in the case of the *National Bank vs. Commonwealth,* 9 Wall., 353, "If the state can not require the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject." The right of the state to compel the bank to pay a tax levied on the shares is not dependent upon its granting to the bank the express right of recovery back from the shareholder. This proposition was determined in the case of *Corry vs. Mayor and Council of Baltimore,* 196 U. S., 466, 40 L. Addition, 556. In this case, Mr. Justice White, delivering the opinion of the Court, it is said, on page 476 of the opinion: "The principle upheld by the rulings of this Court to which we have referred, concerning the taxation by the states of stock in national banks, is that the sovereignty which creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein, and that a regulation establishing the situs of stock for the purpose of taxation, *and compelling the corporation to pay the tax on behalf of the shareholder,* is not unreasonable regulation. * * * And we think, moreover, that the authority so possessed by the state carries with it the power to endow the corporation with a right of recovery against the stockholder for the tax which it may have paid on his behalf."

This decision does not make the right of the state to require the bank to pay a tax on behalf of its shareholders, dependent upon the grant of a right of recovery on the part of the bank from the individual shareholder. It holds that the state has the right to require a bank to pay a tax levied against its shares of stock and that such a requirement is a reasonable regulation and the right to grant a recovery to a bank from the shareholder is declared to be a separate and independent right, and it would seem that a requirement on the part of a state that a corporation, which exists by virtue of a grant of the state, should pay the taxes to be assessed by the state against the shares of stock of the corporation, is not an unreasonable regulation and the Constitution of the United States does not prohibit such a regulation.

III.

At the time of the oral argument of these causes, when they were first submitted, a good deal was said upon the question of whether or not the shareholders of savings banks had a right to deduct the amount of their debts from the value of their shares of stock, and it was contended that if they did not have, then the shareholders were denied the equal protection of the law and that, therefore, the statute was in conflict with the Constitution of the United States. Under the Iowa statutes every person is entitled in making up the amount of moneys and credits which he is required to list for taxation, to deduct from the actual value thereof the gross amount of all debts in good faith owing by him,—Section 1311 of the Code of Iowa—and in Section 1309 of the Code the term "credit" is defined as including "every claim or demand due or to become due for money, labor or other valuable thing, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage or otherwise * * *" The Supreme Court

of Iowa in a number of cases has had occasion to pass upon the question of whether the owner of corporation stock, other than stock in state and savings banks, was entitled to deduct from the value thereof his debts; that is as to whether corporation stock was a credit within the definition as laid down in Section 1309 of the Code. In the case of the *First National Bank vs. the City Council of Albia,* 85 Iowa, 736, it laid down the rule that the term "credit" included shares of stock of national banks. This holding was based upon the proposition, however, that to hold otherwise would constitute a discrimination against the holders of shares of stock of national banks forbidden by the act of Congress which authorizes the taxation of such shares.

In the case of *Bridgman vs. City of Keokuk,* 33 N. W., 355, 72 Iowa, 42, the Court held that corporation stock was not a credit from which could be deducted the debts of a stockholder. In the case of *Polk County vs. Kauffman,* decided in 1898, 74 N. W., 8, the Court again held that the valuation of stock can not be offset by indebtedness. None of these cases involved the question of whether stock in savings banks is a credit from which the owner might deduct his debts, and in the case of the *Primghar State Bank vs. Rerick,* 64 N. W., 801, the Court expressly declined to pass upon the question of whether such shares are credits because the question was not necessarily involved in the determination of the cause. So that the question of whether the owner of stock in a savings bank is entitled to deduct from the value thereof his debts is an open question in the State of Iowa, a question upon which our Supreme Court has not passed.

If to hold that such a deduction could not be made would constitute a discrimination against the savings bank shareholder in violation of the provisions of the 14th Amendment, then it is to be presumed that the Supreme Court of Iowa would not so hold.

But however that may be, this question is not in the cases

at bar. No stockholder is a party to these cases, nor is there any stockholder complaining that he was not permitted to deduct his debts from his holdings of stock in the plaintiff banks.

In the case of the *People of the State of New York vs. Reardon,* decided by this Court on the 7th day of January, of this year, Mr. Justice Holmes delivering the opinion, it was said: "But there is a point beyond which this Court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this Court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if, for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. (Citing cases.) If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails. With regard to taxes, especially, perhaps it might be assumed that the legislature meant them to be valid to whatever extent they could be sustained, or some other peculiar principle might be applied."

There is no express statutory provision in Iowa that debts may not be deducted from the value of savings bank shares of stock, anl it depends upon what interpretation the Supreme Court of Iowa places upon Sections 1309 and 1311 of the Code whenever the question is before it for decision. It has held that shares of national banks were credits from which debts might be deducted and it may apply the same rule to shares

of stock of savings banks, but however that may be this question is not involved in these cases.

Respectfully submitted,

W. H. BREMNER, and
M. H. COHEN,
Attorneys for Defendants in Error.

Supreme Court of the United States.

Nos. 82, 83 and 92.—October Term, 1906.

Home Savings Bank, Plaintiff in Error, 82 vs. The City of Des Moines and The City Council of said City as a Board of Review. People's Savings Bank, Plaintiff in Error, 83 vs. The City of Des Moines and The City Council of said City as a Board of Review. Des Moines Savings Bank, Plaintiff in Error, 92 vs. The City of Des Moines and The City Council of said City as a Board of Review.	In error to the Supreme Court of the State of Iowa.

[April 22, 1907.]

Mr. Justice Moody delivered the opinion of the Court.

These cases raise the same Federal question. The plaintiffs in error were banking institutions incorporated under the laws of the State of Iowa. Upon each of them a tax was levied under a law of that State, which provided that "*Shares of stock of State and savings banks* and loan and trust companies *shall be assessed to such banks* and loan and trust companies and *not to individual stockholders.*" The material sections of the code are printed in the margin.*

* Sec. 1322. Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. *Shares of stock of State and savings banks* and loan and trust companies *shall be assessed to such banks* and loan and trust companies *and not to the individual stockholders.* At the time the assessment is made, the officers of *national banks* shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the Auditor of State, which shall be furnished him on request, shall

Each bank owned at the time to which the assessment related United States bonds, the value of which they insisted should be deducted from the valuation of the property assessed to them. The taxing authorities refused to make that deduction, and their action was sustained by the Supreme Court of the State, whose judgment has been brought here by writs of error for review.

These banks were corporations created by the State of Iowa. In imposing burdens upon them, their property, or their shares, the State does not, as in the case of national banks, require any authority from the United States. Its own governmental power is sufficient for the imposition of such taxes, assessed by such methods, and under such standards of valuation as it may choose, unless something is done which violates some provision of the Federal Constitution, or of a Federal law which by that Constitution is made supreme. The only claim of violation of Federal right which need be considered here is that bonds of the United States have been taxed. It is conceded and cannot be disputed that these securities are beyond the taxing power of the State, and the only question, therefore, is whether in point of fact the State has taxed them. The first step useful in the solution of this question is to ascertain with precision the nature of the tax in controversy, and upon what property it was levied, and that step must be taken by an examination of the taxing law as interpreted by the Supreme Court of the State. A superficial reading of the law would lead to the conclusion that the tax authorized by it is a tax

---

fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed.

SEC. 1325. The corporations described in the preceding sections shall be liable for the payment of *the taxes assessed to the stockholders of such corporations*, and such tax shall be payable by the corporation in the same manner and under the same penalties as in case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this State, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his post office address, as the same appears upon the books of the company, or is known by its secretary.

upon the shares of stock. The assessment is expressed to be upon "shares of stock of State and savings banks and loan and trust companies." But the true interpretation of the law cannot rest upon a single phrase in it. All its parts must be considered in the manner pursued by this court in *New Orleans* v. *Houston*, 119 U. S. 265, 278, and *Home Insurance Co.* v. *New York*, 134 U. S. 594, with the view of determining the end accomplished by the taxation, and its actual and substantial purpose and effect. We must inquire whether the law really imposes a tax upon the shares of stock as the property of their owners, or merely adopts the value of those shares as the measure of valuation of the property of the corporation, and by that standard taxes that property itself. The result of this inquiry is of vital importance, because there may be a tax upon the shares of a corporation, which are property distinct from that owned by the corporation and with a different owner, without an allowance of the exemption due to the property of the corporation itself, while, if the tax is upon the corporation's property, all exemptions due it must be allowed. Looking then further into the law, it appears that the shares are to be "assessed to such banks . . . and not to the individual stockholders." When this is read the doubt instantly arises whether the law intended to tax the corporation for property which it does not own, but which on the contrary is owned by the stockholders. Certainly such a purpose, against common justice and of doubtful constitutionality, ought not to be attributed to the law if any other fair construction is possible. With respect to taxation usually, if not necessarily, property and its owners are inseparable. Taxes are assessed against persons upon the property which they own, not upon property which others own. We should be reluctant to suppose that there has been any departure from this principle in this law. It, however, is not an uncommon and is an entirely legitimate method of collecting taxes to require a corporation, as the agent of its shareholders, to pay in the first instance the taxes upon shares, as the property of their owners, and look to the shareholders for reimbursement. In this very law we have an example of this method. By § 1322, national bank shares are assessed to the stockholders, and by § 1325 the corporations are made liable to pay the tax and are secured by a lien on the stock and dividends, which may be enforced by sale. The State banking corporations are excluded *ex industria* from this statutory right of reimbursement by confining it to the cases of "taxes assessed to the stockholders of such corporation." This cannot include the case of State bank shares which are not so assessed. Nor can the corporations in the case at bar have by any possibility a common law right to recover the tax paid from the shareholders. The law imposes no obligation on the shareholder. In paying the tax the corpora-

tion has paid its own debt, and not that of others, and there is nothing in such a payment from which the law can imply a promise of reimbursement. These taxes, therefore, are not to be paid by the banks as agents of their stockholders, but as their own debt, and unless it is supposed that the law requires them to pay taxes upon property which they do not own, the taxes must be regarded as taxes upon the property of the banks. The fair interpretation of the law is that the taxes are upon the property of the banks. In the valuation for taxation the assessor is required to "take into account the capital, surplus and undivided earnings," must be furnished with "a verified statement of all matters provided by the preceding section," which by reference is seen to be a detailed statement showing the assets of the bank (§ 1321).* It is true that the assessor may resort to "other information he can obtain," but, although capital, surplus and undivided earnings are expressly named, nothing is said of the franchise and good will, essential factors of the value of the shares, though not of the value of the assets of the bank See *People* v. *Coleman*, 126 N. Y. 433. Moreover, the section closes with the words, "and the property of such

---

*SEC. 1321. Private bankers. Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificate, receipts or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement showing the assets, aside from from real estate, and liabilities of such bank or banker on January 1st of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items;

2. The actual value of credits, consisting of bills receivable owned by them and other credits due or to become due;

3. The amount of all deposits made with them by others, and also the amount of bills payable;

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing the assets, and the specific kinds and descriptions thereof exempt from taxation;

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof;

The aggregate actual value of moneys and credits, after deducting therefrom the amount of deposits and of debts owing by such banks, as provided in this chapter, and the aggregate actual value of bonds and stocks after deducting the portion thereof, exempt or otherwise, taxed in this State, and also the other property pertaining to the busines shall be assessed at twenty-five per cent of the actual value of the same, not including real estate, which shall be listed and assessed as other real estate.

corporation shall not be otherwise assessed," which plainly implies that the assessment already provided for is in substance an assessment upon the property of the corporation. That the law was administered upon the theory that the tax was upon the property of the corporation is signally illustrated by the proceedings in these cases. The valuation was first made on the exact figures of the capital, surplus, and undivided earnings, deducting the holdings of United States securities. Then, upon being advised that the deduction was erroneous, the assessor corrected the valuation by adding the value of the securities deducted. We therefore conclude that the substantial effect of the law is to require taxation upon the property, not including the franchise, of the banks, and that the value of the shares, ascertained in a manner appropriate to determine the value of the assets, is only the standard or measure by which the taxable valuation of that property is determined. This we think is consistent with the interpretation of the law by the Supreme Court of Iowa, which sustained the taxation upon grounds which will be presently considered.

The next question is whether such taxation violates any provision of the Federal Constitution or of any paramount Federal law. The State cannot by any form of taxation impose any burden upon any part of the national public debt. The Constitution has conferred upon the Government power to borrow money on the credit of the United States, and that power cannot be burdened or impeded or in any way affected by the action of any State. This principle was announced in *Weston* v. *Charleston*, 2 Pet. 449, where it was held that taxes upon the stock of the United States levied by one of the municipal corporations of South Carolina were invalid. From that time no one has questioned the immunity of national securities from State taxation. It may well be doubted whether Congress has the power to confer upon the States the right to tax obligations of the United States. However this may be, Congress has never yet attempted to confer such a right. Until the time of the Civil War it was not thought to be necessary to express the constitutional prohibition in an act of Congress. But on the occasion of authorizing the issue of Treasury notes it was enacted that "all stocks, bonds, and other securities of the United States held by individuals, corporations, or associations within the United States shall be exempt from taxation by or under State authority." Act of February 25, 1862, (12 Stat. at Large 346.) The substance of this enactment is embodied in § 3701 of the Revised Statutes, and has usually, if not invariably, since 1862 been inserted in acts authorizing the issue of bonds.

That the tax upon the property of a bank in which United States securities are included is beyond the power of the State, and, what perhaps is of lesser moment, within the prohibition of the statutory law, hardly needs to

be proved by authority. But the authority is clear and conclusive. With the beginning of the Civil War large amounts of the national securities began to be issued. So important it was to sustain the national credit that, as we have seen, Congress for the first time began the practice of accompanying the authority for their sale with an express prohibition of their taxation by the States. The State banks often invested a large part or the whole of their resources in these securities, and the question of their liability to State taxation on their capital and surplus thus invested at once arose. The Bank of Commerce, incorporated under the laws of New York, invested all its capital, except its investment in real estate, in United States bonds. Under the authority of a law requiring that the capital stock should be assessed at its actual value a tax was levied. The Court of Appeals of New York sustained the tax so far as it applied to securities issued before the act of 1862, expressly declaring their exemption, and annulled it so far as it applied to securities thereafter issued. The case came here on a writ of error. *Bank of Commerce* v. *New York City*, 2 Black, 620. This court held the tax invalid on all securities, without even alluding to the act of 1862, but basing the decision entirely upon the constitutional inability of a State to affect by taxation the exercise of the sovereign power of the nation in borrowing money on its credit. This was the rule specifically declared in *Weston* v. *Charleston*, as an application of the general rule of the immunity from State control of the operations of the Federal Government in the region of its supremacy. To the argument, which was strenuously urged, that the tax was not upon the securities but upon the capital of the bank, and that thereby the case was distinguished from *Weston* v. *Charleston*, the court, by Mr. Justice Nelson, replied: "We cannot yield our assent to the soundness of the distinction."

The State of New York then amended its law, and enacted that banks should be "liable to taxation on a valuation equal to the amount of capital stock paid in, or secured to paid in, and their surplus earnings." The validity of taxation under the amended law was considered in the *Bank Tax Case*, 2 Wall. 200. There it was insisted that the tax was imposed upon the corporation and not its property, and that the statute only prescribed a measure of the amount annually to be paid for the franchises. But the court held that the amendment simply changed the method of fixing the amount of capital, and that the tax was upon the capital, which, so far as invested in national securities, was beyond the power of the State.

The case at bar cannot be distinguished in principle from these cases. In the first case the tax was on the capital stock at its actual value; in the second case on the amount of the capital stock and the surplus earnings, and in the case at bar on the shares of the stock, taking into account

the capital, surplus and undivided earnings. It would be difficult for the most ingenious mind and the most accomplished pen to state any distinction between these three laws, except in the manner by which they all sought the same end—the taxation of the property of the bank. The slight concealment afforded by the omission of the property *eo nomine* is not sufficient to disguise the fact that in effect it is the property which is taxed. If included in that property it is discovered that there is some which is entitled by Federal right to an immunity, it is the duty of this court to see that the immunity is respected.

It is, however, contended that although these cases have not been overruled, distinctions have been drawn in later cases which are applicable here, and withdraw the cases before the court from their authority. These later cases must therefore be considered and their exact effect determined. We may quickly put out of view those not relied upon here, in which it has been held that the State may levy a tax upon the value of the franchise of corporations created by it, or upon the right of succession to property on the death of its owner, without first deducting the amount of United States securities owned by the corporation whose franchise is taxed, or by the estate transmitted under the inheritance laws of the State. *Society for Savings* v. *Coite*, 6 Wall. 594; *Provident Institution* v. *Massachusetts*, 6 Wall. 611; *Hamilton Company* v. *Massachusetts*, 6 Wall. 632; *Home Insurance Company* v. *New York*, 134 U. S. 594; *Plummer* v. *Coler*, 178 U. S. 115. The theory of all these cases is that the taxes are not imposed upon the assets of the corporation or the property of the decedent, but in the one case upon the franchise granted by the State and in the other case upon the right of succession to property on the death of the owner which is conferred by the State.

But another line of cases cannot so easily be dismissed. They were relied upon by the Supreme Court of Iowa, and the respect due to the opinion of that court demands that the reasons why we think those cases do not apply to the case at bar should be fully stated. These cases relate to the right of the State to tax at their full value shares of stock as the property of the shareholders. Although the States may not in any form levy a tax upon United States securities, they may tax, as the property of their owners, the shares of banks and other corporations whose assets consist in whole or in part of such securities, and in valuing the shares for the purposes of taxation is not necessary to deduct the value of the national securities held by the corporation whose shares are taxed. The right to tax the shares of national banks arises by Congressional authority, but the right to tax shares of State banks exists independently of any such authority, for the State requires no leave to tax the holdings in its

own corporations. The right of such taxation rests upon the theory that shares in corporations are property entirely distinct and independent from the property of the corporation. The tax on an individual in respect to his shares in a corporation is not regarded as a tax upon the corporation itself. This distinction, now settled beyond dispute, was mentioned in *McCulloch* v. *Maryland*, 4 Wheat. 316, where, in the opinion of Chief Justice Marshall, declaring a tax upon the circulation of a branch bank of the United States beyond the power of the State of Maryland, it was said that the opinion did not extend "to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other properties of the same description throughout the State." The distinction appears, however, to have been first made the basis of a decision in *Van Allen* v. *The Assessors*, 3 Wall. 573. The National Bank Act, as amended in 1864, (R. S. § 5219) permitted the States to include in the valuation of personal property for taxation the shares of national banks "held by any person or body corporate" under certain conditions not necessary here to be stated. Acting under the authority of this law, the State of New York assessed the shares of Van Allen in the First National Bank of Albany. At that time all the capital of the bank was invested in United States securities, and it was asserted that a tax upon the individual in respect of the shares he held in the bank was, unless the holdings in United States securities were deducted, a tax upon the securities themselves. But a majority of the court held otherwise, saying by Mr. Justice Nelson: "The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created can deal with the corporate property as absolutely as a private individual can deal with his own. . . . The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the States, under the limitations prescribed."

In an opinion, in which Justices Wayne and Swayne joined, Chief Justice Chase dissented from the judgment upon the ground that taxation of the shareholders of a corporation in respect of their shares was an actual though an indirect tax on the property of the corporation itself. But the

distinction between a tax upon shareholders and one on the corporate property, although established over dissent, has come to be inextricably mingled with all taxing systems and cannot be disregarded without bringing them into confusion, which would be little short of chaos.

The Van Allen case has settled the law that a tax upon the owners of shares of stock in corporations in respect of that stock is not a tax upon United States securities which the corporations own. Accordingly such taxes have been sustained by this court, whether levied upon the shares of national banks by virtue of the Congressional permission or upon shares of State corporations by virtue of the power inherent in the State to tax the shares of such corporation. The tax assessed to shareholders may be required by law to be paid in the first instance by the corporations themselves as the debt and in behalf of the shareholder, leaving to the corporation the right to reimbursement for the tax paid from their shareholders, either under some express statutory authority for their recovery or under the general principle of law that one who pays the debt of another at his request can recover the amount from him. *National Bank* v. *Commonwealth*, 9 Wall. 353; *Lionberger* v. *Rouse*, 9 Wall. 468; *Aberdeen Bank* v. *Chehalis County*, 166 U. S. 440; *Merchants Bank* v. *Pennsylvania*, 167 U. S. 461; *Cleveland Trust Company* v. *Lander*, 184 U. S. 111. The theory sustaining these cases is that the tax was not upon the corporations' holdings of bonds, but on the shareholders' holdings of stock, and an examination of them shows that in every case the tax was assessed upon the property of the shareholders and not upon the property of the corporation.* There is nothing in them which justifies the tax under consideration here, levied, as has been shown, on the corporate property. Without further review of the authorities it is safe to say that the distinction established in the Van Allen case has always been observed by this court, and that, although taxes by States have been permitted which might indirectly affect United States securities, they have never been permitted in any case except where the taxation has been levied upon property which is entirely distinct and independent from these securities. On the other hand, whenever, as in these cases, the tax has been upon the property of the corporation, so far as that property has consisted of such securities, it has been held void.

One other consideration only needs to be noticed. It is said that where a tax is levied upon a corporation measured by the value of the shares in it, it is equivalent in its effect te a tax (clearly valid) upon the shareholders in respect of their shares, because, being paid by the bank, the burden falls eventually upon the shareholders in proportion to their hold-

*This fact assumed but not stated in *Cleveland Trust Co.* v. *Lander* is shown by the record to exist.

ings. It was upon this view that the lower court rested its opinion. But the two kinds of taxes are not equivalent in law, because the State has the power to levy one and has not the power to levy the other. The question here is one of power and not of economics. If the State has not the power to levy this tax we will not inquire whether another tax which it might lawfully impose would have the same ultimate incidence. Precisely the same argument was made and rejected in *Owensboro National Bank* v. *Owensboro*, 173 U.S. 664. There it appeared that a tax upon the intangible property of a national bank had been levied under the name of a franchise tax. Such a tax upon one of the agencies of the national government is beyond the power of the State. But it was contended that although the tax was not in form upon shares in the hands of shareholders (a tax lawful by the permission Congress has given), it was the equivalent of such a tax. To this contention the court, by Mr. Justice White, replied: "To be equivalent in law involves the proposition that a tax on the franchise and property of a bank or corporation is the equivalent of a tax on the shares of stock in the names of the shareholders. But this proposition has been frequently denied by this court, as to national banks, and has been overruled to such an extent in many other cases relating to exemptions from taxation, or to the power of the State to tax, that to maintain it now would have the effect to annihilate the authority to tax in a multitude of cases, and as to vast sums of property upon which the taxing power is exerted in virtue of the decision of this court holding that a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the name of the stockholders. . . . If the mere coincidence of the sum of the taxation is to be allowed to frustrate the provisions of the act of Congress, then that act becomes meaningless and the power to enforce it in any given case will not exist. . . . The argument that public policy exacts that where there is an equality in amount between an unlawful tax and a lawful one, the unlawful tax should be held valid, does not strike us as worthy of serious consideration." These words apply with equal force to the case at bar. Moreover, it may be said that, if given the effect claimed, the consideration that the ultimate burden of the tax is distributed upon the shareholders in proportion to their holdings, would have saved the taxes condemned in the Bank of Commerce case and the Bank Tax case, and indeed all taxes assessed upon the property of corporations, and the immunity from State tax of United States bonds owned by corporations would indirectly be absolutely destroyed.

We regret that we are constrained to differ with the Supreme Court of the State on a question relating to its law. But holding the opinion that the law directly taxes national securities, our duty is clear. If by the

simple device of adopting the value of corporation shares as the measure of the taxation of the property of the corporation that property loses the immunities which the supreme law gives to it, then national securities may easily be taxed, whenever they are owned by a corporation, and the national credit has no defense against a serious wound.

Judgments reversed, and cases remanded for further proceedings not inconsistent with this opinion.

The CHIEF JUSTICE, Mr. Justice HARLAN, and Mr. Justice PECKHAM dissent.

True copy.

Test:

Clerk Supreme Court, U. S.